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No. 91-2051

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

STATE OF SOUTH DAKOTA IN ITS OWN
BEHALF, AND AS PARENS PATRIAE,

Petitioner,

v.

GREGG BOURLAND, PERSONALLY AND AS CHAIRMAN
OF THE CHEYENNE RIVER SIOUX TRIBE AND
DENNIS ROUSSEAU, PERSONALLY AND AS DIRECTOR
OF CHEYENNE RIVER SIOUX TRIBE
GAME, FISH AND PARKS,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JOINT APPENDIX--VOLUME TWO

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96 Cong. Rec. 15609 (September 22, 1950)

Mr. CASE of South Dakota. . .

Hunting and fishing rights also were a part of the rights recognized by treaty in 1851 and 1868 and ratified by the Congress. To the extent that these may be impaired or destroyed, the tribe is entitled to compensation apart from settlement with the allottees holding individual tracts of land.

The building of the dam in question, the Oahe Dam, not only floods out the Missouri River, but backs water far up its tributaries, the Cheyenne, Moureau, and other streams. This floods out the bottom lands on these tributaries which have provided winter feed and shelter for tribal herds and for the cattle of operators to whom the uplands have been leased for summer grazing.

Everyone who runs cattle in the West knows that the value of summer grazing lands

depends in part upon the availability of winter feed. The destruction of the bottom hay lands creates a tribal loss for which simple payment for the lands themselves is not equitable compensation. So, this bill, already approved by both House and Senate, establishes a procedure for negotiating a just and equitable settlement.

MEMORIAL

To The 83rd Congress

In Regard To

OAHE PROJECT

SOUTH DAKOTA

S. 695 AND H.R. 2233

PRESENTED BY

THE NEGOTIATING COMMITTEE

OF THE

CHEYENNE RIVER SIOUX TRIBAL COUNCIL

[p. 35, 4, 5]

We are convinced that the time must come when the American Indian will cease to be the ward of the United States. We recognize that appropriations for Indian Service and Treaty compliance have increased year by year until it now reaches amounts that were unthinkable fifty years ago. It is our experience that

the enlarged appropriations have not resulted in the development, the education and the civilization of our Indian people, to which they are entitled.

We have set out fully and we think we have shown conclusively that the Sioux Tribe of Cheyenne River Reservation should be placed in position to take over their own affairs and ultimately be released as wards of the United States. The pending Oahe bills, as introduced, should be passed by the Congress.

REPORT NO. 138

DAMAGE
to
INDIANS OF FIVE RESERVATIONS
from
THREE MISSOURI RIVER RESERVOIRS
in
NORTH DAKOTA AND SOUTH DAKOTA

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Missouri River Basin Investigations Project
Billings, Montana

April 1954

Page 77, ¶ 2 & 3
Page 78

On the basis of the Fish and Wildlife Service values, wildlife losses on four reservations will amount to \$175,470 annually, table 24. This amount is based upon sportsmen's expenditures at the general level of prices which prevailed during 1939-44. Sportsmen's expenditures reflect the amount sportsmen are willing to spend to bag the

various species of game. Examples of these prices on 1939-44 base are: deer \$100; antelope \$75; waterfowl, pheasants, and grouse \$5; and rabbits \$1. Under the price projection now being used by Federal agencies in project planning reports (farm prices at 215 percent of the 1910-14 average) these prices are increased 36 percent--\$136 for a deer, \$102 for an antelope, etc.

The value of game to the Indian people undoubtedly is less than the amount sportsmen spend for hunting game. Reservation Indians probably are more skilled hunters than the average sportsman, use less costly equipment, and no hotel bills or long distance travel are incident to their hunting activities. Sportsmen's expenditures therefor are not considered a sound basis for arriving at the value of game to Indians. The loss to Indians from destruction of wildlife is taken to be the value to them of the annual wildlife

harvest which they obtain. This value may be measured by the additional amounts which Indians will have to pay for food to replace that previously supplied by the destroyed wildlife resources. Estimated values for each reservation are shown in the bottom portion of table 24. They reflect the increase in store bills which will result from the loss of game for food. Fur values are based on the market prices of these furs at 1939-44 price level. These are the prices used in the Fish and Wildlife Service reports.

Table 24. Annual Loss in Wildlife Values Expected to Result from Flooding of Indian Lands on Five Reservations

Reserva- tion	Big Game	Up- land Game	Fur Animal	Water Fowl	Total	Per Res- ident Family
	—	—	—	—	—	—
	\$	\$	\$	\$	\$	\$

Loss: Computed by Fish & Wildlife Service 1/

Standing Rock	17,200	35,000	8,100	0	60,300	
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Cheyenne River	30,600	32,000	11,700	0	74,300
Crow Creek	408	16,055	1,141	4,238	21,842
Lower Brule	355	13,987	994	3,692	19,028

Four Reservations	48,563	97,042	21,935	7,930	175,470
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Estimated Loss to Indians 2/

Standing Rock	8,600	10,500	8,100	0	27,200	40
Cheyenne River	15,300	9,600	11,700	0	36,600	61
Crow Creek	204	4,816	1,141	1,271	7,432	30
Lower Brule	178	4,196	994	1,108	6,476	55
Four Reservations	24,282	29,112	21,935	2,379	77,708	47
Fort Berthold 3/	25,600	8,100	7,000	0	40,700	110
Five Reservations	49,882	37,212	28,935	2,379	118,408	59

1/ Data for Standing Rock and Cheyenne River Reservations are from "A Report on Fish

and Wildlife Resources in Relation to the Water Development Plan for the Oahe Reservoir," Fish and Wildlife Service, January 1951. This report contains separate estimates for Cheyenne River and Standing Rock Reservations.

Data for Crow Creek and Lower Brule Reservations are from "A Preliminary Evaluation of the Effect of the Fort Randall Reservoir on Fish and Wildlife Resources," Fish and Wildlife Service, February 1948. Data for Crow Creek and Lower Brule are 8.15 and 7.10 percent respectively of the total for the Fort Randall Reservoir, which represent the percentage of Indian land in the reservoir area.

2/ Values for big game are approximately 25 cents a pound live weight or 50 cents a pound locker-dressed weight. Values of upland game and waterfowl average around

\$1.50 per bird--50 cents to 75 cents a pound, and for rabbits 30 cents a head. These values are approximately 50 percent of the 1939-44 sportsman's value of big game and 30 percent of the value of upland game and waterfowl. Fur values are the same as those used in the Fish and Wildlife Service reports, namely, the 1939-44 average market value of the furs.

3/ Data for Fort Berthold are based on 1949-53 average take as reported in annual reports of the Branch of Forest and Range Management, Bureau of Indian Affairs. The value of fur-bearing animals is an unpublished estimate of the Fish and Wildlife Service.

Hearings Before the Committee on
Interior & Insular Affairs
Joint Senate and House Subcommittee
on Indian Affairs (5/19/54)

H.R. 2233 and S. 695

[pp. 117-119]

Mr. Berry. There is one more thing that I would like to proceed with just a little bit further. I think we should have a definite understanding, and I think that you owe this to the committee to give us, and to Indians, to give us a definite idea on whether you intend to buy this land, fee simple, or whether you are planning to acquire flowage rights or just what you intend to do so far as Oahe Dam is concerned.

Mr. Kimbell. I do not know whether I should make an answer directly on that question for the Department without going back and checking with my superiors, Mr. Chairman. I have some firm personal feelings on the

subject and I might say that for the benefit of the committee.

Mr. Berry. Do you not think it is fundamental to this bill?

Mr. Kimbell. That we would be satisfied with a flowage easement on the Indian lands, if that is what the committee feels is the fairest thing for the Indians. We can operate with that. That is my personal feeling. I would have to check that with my superiors to be able to say that is the position of the Department.

Mr. Berry. And that would apply throughout the entire reservation area, is that correct?

Mr. Kimbell. Now you are injecting, are you not, a question as to the -- there are a few scattered tracts of non-Indian land within that reservation area and you are asking, would we be agreeable to acquiring that land in fee, say, from the non-Indian owner and

then conveying the fee to the Indian subject to a reservation of flowage easement by the United States, is that what it would amount to?

Mr. Berry. If you could best handle it that way.

Mr. Kimbell. In order to do that, to do what I think you are asking, that would be the mechanics that we would go through, I believe.

Mr. Abbott. The question, perhaps, that is raised, Mr. Kimbell, by the injection of this flowage easement possibility here, with your understanding of the lengthy negotiations and the impact on the economic, agricultural units of these people, you would concede that it will make a great deal of difference whether that flowage easement there is applied or if the fee easement there is applied?

Mr. Kimbell. That is quite right and it should make a great deal of difference on the compensation that they are entitled to.

Mr. Abbott. The next question would be that and it would reflect directly on the amount of compensation. So that care would have to be taken to determine whether or not a few people are going to benefit from those flowage easements or whether all of those persons who are relocated would have an opportunity to benefit from those flowage easements.

Is it not true it would rather considerably reflect on the total damages involved?

Mr. Kimbell. That is quite right and this question is one that we have not as yet resolved definitely with the Department of the Interior as to what the two departments feel would be the best thing to do.

Hearing of the
Committee on Interior and Insular Affairs
Subcommittee of the Committee on
Interior and Insular Affairs of
the United States Senate;
Subcommittee of the Committee on
Interior and Insular Affairs of the
House of Representatives

S.695

Acquisition of Lands for Oahe
Reservations and Indian Rehabilitations

Thursday, May 20, 1954

Page 150

Senator Watkins. Do you have any considerable amount of acreage in fee patent in that area?

Mr. Fuhriman. It is relatively small. I don't have the exact figures.

Mr. Ducheneaux. A very small acreage, fee patent land.

Mr. Sigler. The Department's recommendation is based entirely on a matter of principle, that an Indian who has been

declared competent, who has received a fee patent to this land, is a competent Indian, and if he wants to buy additional land somewhere else there is no reason why he should take it in trust.

Senator Watkins. I will agree with you on that.

Page 159

Representative Berry. Here are some figures on the fee patent land we were asking about a while ago. There are eight tracts, embracing approximately three thousand acres.

Senator Watkins. That is all the fee patent land you have?

Mr. Kimbel. That is all that is in the taking area.

Page 160

Senator Watkins. I have had some experience, not in taking Indian lands, but in taking lands from the ordinary American people, the while [sic] people. It is quite

different. There are no indirect damages, and, of course, no rehabilitation money either for them. We just take it, and they have to go out and buy it somewhere else if they can find it somewhere else.

Page 186

Mr. Case. All we want is information. We feel slighted and neglected that we haven't been advised of this joint policy, that does affect the Oahe taking line. And we are competent to go ahead. We have made a bargain. We have offered our bargain right here. We will take so much money for so many acres of land, and give you the fee title.

Page 205

Mr. Ducheneaux. And I also want to introduce the article.

Representative Berry. Let's just take this page. It is page 28 of the April 18, 1953 issue, and it will be made a part of the file.

Mr. Ducheneaux: I also want to have [sic] go into the record, Mr. Chairman, "TVA Land Acquisition Experience Applied to Dams in the Missouri Basin," and that has been compiled by the South Dakota State College, which points out that the counties and the states have been reimbursed for their revenue losses. And that is [sic] what we are asking [sic] in these severance damages here. And we think that if the states and counties are paid for their loss of revenue, we should be paid for our loss of revenue.

Representative Berry. Of the tribe, that is, on the same basis as a municipal corporation?

Mr. Ducheneaux: And you will find that on page 39, I believe.

Mrs. Ducheneaux: That is tax revenue losses.

Representative Berry. It will be received and made a part of the file.

Page 264-268

Mr. LeBeau. Mr. Chairman, I would like to now refer to Section 2 of the bill, concerning the loss of wildlife, wild fruits and berries, and the loss of timber supply.

This morning, in the testimony given by the M.R.B.I., they testified to the fact that the Indians were losing such values as wild fruit, wild game, berries, and an annual loss of timber.

It is a custom among our Indian people and of other Indians all over the country to utilize whatever they can for a living, for subsistence. We utilize the wild game that we have there. We utilize the wild fruits and berries and also the timber.

I think I explained a while ago the general type of buildings used by the majority of Indians are constructed from native timber, logs; also livestock corrals and stock shelters, posts, sheds, are all constructed

from these poles and logs harvested from these various types of timber, native timber. Also, all of the fuel used for heating and cooking purposes is derived from native timber.

And because of the fact that the timber is there, we have wild fruit and wild game and wild berries which we can utilize.

Our estimation of that is based on the M.R.B.I. report. They stated that they are a fact-finding board furnishing facts as much as possible, and in much of our evidence we relied on their reports.

We had stated a part of their report in our Memorial. On page 19 of the Memorial there is a quote on non-cash subsistence values. There is explained there that native timber is their principal source of fuel, corral poles, and house logs, and also the value, the estimated value, of that timber, the use value to the Indians.

It also explains that wild fruit and wild game use by the Indians.

The figures shown on page 20 show the loss of wildlife resources, which was taken from the report of the Fish and Wildlife Service in Billings, Montana in January of 1951. The value of this loss of wildlife resources was placed at \$74,300 annually.

Because of the fact that we are losing these resources forever, we have capitalized that sum at 4 per cent to arrive at our value. And that value is a part of Section 2 of the bill.

Representative Shuford. What does that amount to in dollars and cents? You say it is included, but what is the actual value that you placed on it?

Mr. LeBeau. That is included in the \$6 million quote on page 3 of the bill.

Mrs. Ducheneaux. On the back of the Memorial I think there is a reference to that.

Mr. Case. On page 27.

Representative Shuford. \$1,857,500.

Mr. LeBeau. Yes. The other two totals there on that page are the loss of timber supply and the loss of wild fruit and wild game.

I have taken that figure in the M.R.B.I. report and capitalized on it. That is the way we arrived at the totals.

Representative Shuford. What does your wildlife consist of?

Mr. LeBeau. It consists of deer, beaver, rabbits, pheasants, and other small game that we have there.

Representative Shuford. You do not think you lose it completely, do you? Will they not move out from down below and go up on to higher ground?

Mr. LeBeau. The type of wildlife that inhabits those timbered bottoms could not live on the uplands.

Representative Shuford. The deer could not live on the uplands?

Mr. LeBeau. No. There are antelope on the uplands. We haven't considered them. This is a type of deer, though, that I believe it has been proven by experience in the Fort Peck Reservoir in Montana --

Representative Shuford. Is it a white-tailed deer?

Mr. LeBeau. Yes. -- that it could not survive on the uplands without shelter.

Representative Shuford. Not the type of Virginia deer, is it? A small deer, is it?

Mr. LeBeau. I wouldn't know what type of deer you have in Virginia.

Representative Shuford. Now, as to the pheasant you would lose, is that the ring-neck?

Mr. LeBeau. That is right.

Representative Shuford. They will move up into the uplands, will they not?

Mr. LeBeau. They will not survive on the uplands during the winter. They have to have shelter. Because of the loss of that shelter, they will not survive.

Representative Berry. There is very little farmland on the upland there, and very little feed.

Mr. LeBeau. The only type of wild birds that survive there are the native what we call prairie chickens, the grouse. They survive on the uplands.

Representative Shuford. I believe you speak about your wild fruit. That is not too important, it seems. You do not lay too much stress on that.

Mr. LeBeau. They do use it.

Representative Shuford. They do use it; but you do not have too much of it there. What does that consist of?

Mr. LeBeau. That consists of plums, choke cherries, currants, and sand cherries.

Representative Shuford. Blackberries?

Mr. LeBeau. No, we have no blackberries. Wild gooseberries and grapes.

Representative Shuford. Are those fox grapes?

Mr. Case. No, they are the bunch type.

Page 287-289

Mr. Case. . . Now, Section X of the bill is much more important and should have more detailed explanation than I can possibly give it now. Section X is in regard to the right of access to the shore line, and provides that after the gates of the dam are closed and the waters impounded, the tribe and the members shall have the right to graze stock on the land between the level of the reservoir and the taking line described in Part II thereof.

This has been a subject of more or less confusion, since we learned about the division of the lands to be taken into fee patent and flowage easement rights. The matter is not

entirely clear and should have further explanation, either as to what the Corps of Engineers in the Department are going to do, whether they should adopt a new policy or whether they will ask the Congress to proceed with the enactment of this bill.

Representative Berry. Would you yield at that point?

Mr. Case. Yes.

Representative Berry. My suggestion would be that either it be in the bill or in the report that in the event fee title is taken in the Government, which it will be, the tribe be given the leasing, the authority to lease that area, the taking area, for the benefit of the Army Engineers, if it is going to be held by the court.

And I am not sure whether that should be an amendment to the bill, or what. But I do think that the rights of the property on the reservation can only be protected in the event

that the tribe has the leasing of that land, if the Corps of Engineers intend to hold that land and use it for leasing purposes.

Now, I don't know whether that should be an amendment to the bill or whether it should be an understanding.

Mr. Case. It had better be an amendment to the bill, because other than that, these understandings fade as time goes on, and they are always the source of disputes. So I believe that this perhaps will accomplish that purpose. That gives the right of access and the right to graze cattle on that strip between the water level and the taking line. And correspondingly, the same section relates to the right of free access, including the right to hunt and fish on the shoreline of the reservoir, subject, however, to regulations governing the corresponding use by other citizens of the United States.

Now, the right to hunt and fish is a tribal right. It is still preserved and is still holding. No white citizen of South Dakota can go on this reservation and hunt unless he has first obtained a license from the Tribal Council. Our right to continue hunting and fishing is to us an extremely valid and valuable right. It is an ancient right. It is all that is left of our lives as they existed a hundred years ago.

83d Congress
2d Session
(July 23, 1954)
House of Representatives

PTA T

Report No. 2484

(Page 5)

Both the Interior and Army Departments were willing to grant severence [sic] damages for the loss of timber, wildlife, and wild product resources. The tribal negotiators asked for \$8,316,092 to cover expenses involved in this category, broken down as follows:

A. Grazing permit revenue loss	\$4,014,467
B. Loss of timber supply	2,444,125
C. Loss of wildlife, wild fruit, etc.	<u>1,857,500</u>
Total	8,316,092

The controversial figure for grazing permit loss was determined by a very careful calculation in which major consideration was given to the unwillingness of livestock companies to pay the former grazing fees due to insufficient river frontage and lack of access to protection and winter feed presently afforded in river bottoms.

Following lengthy hearings before the Joint House and Senate Subcommittee on Indian Affairs and later before the House Subcommittee on Indian Affairs, the tribal negotiating committee agreed to restudy its requests for compensation. Subsequently, these figures were, in most cases, scaled downward and resubmitted as follows:

I.	Land, timber, and improvements:	
A.	Land, tribal, allotted, assigned, Indian fee patent, and irrigation potential	\$1,940,223.83
B.	Stumpage value, standing timber	308,178.33
C.	Severance damages to individual owners	40,303.74
D.	Improvements, less tribal hospital	<u>326,073.05</u>
	Total	2,614,778.95
II.	Tangible future damages:	
A.	Grazing permit revenue loss	2,226,701.00
B.	Loss of timber supply	689,625.00
C.	Loss of wildlife, wild fruit, etc.	<u>1,056,750.00</u>
	Total	3,973,076.00
III.	Rehabilitation and reestablishment:	
A.	Repayment cattle	

	program	1,797,000.00
B.	Domestic water supply	300,000.00
C.	Farm program	150,000.00
D.	Land purchase program	-----
E.	Off-reservation rehabilitation program	297,500.00
F.	On-reservation rehabilitation housing program	500,000.00
G.	Rehabilitation road program	-----
H.	Educational loan program	800,000.00
I.	Tribal welfare program	2,000,000.00
J.	Business enterprises	<u>200,000.00</u>

Total	6,044,500.00
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Total damages sought:

I.	Land, timber, and improvements	2,614,778.95
II.	Tangible future damages	3,973,076.00
III.	Rehabilitation and reestablishment	<u>6,044,500.00</u>

Total	12,632,354.00
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(Page 13, ¶ 3)

Fourth, it is recommended that section IV be revised to stipulate that the United States agrees to make available the funds necessary to maintain the services and to supplant appurtenant facilities presently provided the Indians in a manner to meet their needs

existing at the time Oahe Dam is closed: the methods and means of meeting such needs to be based upon a thorough study of all feasible courses open to fulfill this obligation. This recommendation is based upon the fact that closure of Oahe Dam is 6 to 8 years in the future. During this period of time the situation of the Indians may change appreciably, particularly in view of the national policy of terminating special Federal services of a public nature to Indians by transfer of responsibility for such services to the States and their local subdivisions.

100 Cong. Rec. 13160 (August 3, 1954)

Mr. Berry. Mr. Speaker, while this does not involve too great a sum of money, it is, in my judgment, one of the most important bills to come before this Congress at this session, because it demonstrates a trend in the program of this administration to put more business in Government and get the Government out of as much business as possible.

The Indian Affairs Subcommittee of the great Committee on Interior and Insular Affairs, have spent more than 123 hours in holding hearings and studying the problems of the various Indians and tribes of Indians in the United States. In addition to that, we have visited a dozen reservations with a view of getting a first-hand knowledge of the conditions and needs and desires of these tribes.

This Congress has already passed legislation which will terminate the Federal supervision over six groups of Indians, and I stress the point that in every instance the Indians themselves have either asked for this terminal legislation and have helped to work out the terminal program, or have given their assent to it.

The first bill we passed authorized withdrawal of Federal supervision over the Indians of Wisconsin involving more than 3,300 Indians. The next withdrew supervision over 4 tribes of Indians in Utah involving 360 Indians. Today we have passed withdrawal bills over tribes in western Oregon involving 2,100 Indians. Another bill authorized withdrawal over the Alabama and Coushatta tribes of Texas involving 600 Indians, as well as part of the Uintah and Ouray Reservations in Utah involving 439 Indians, and the Klamath in Oregon involving 2,000 Indians.

The bill before us now is a bill which authorizes settlement for land damages on the Cheyenne Indian Reservation of the Sioux Tribe of South Dakota and authorizes a rehabilitation program for these people, to put them in shape to where in a period of 10 or 15 years they, too, will be ready to throw off the shackles of Federal supervision.

As I stated, this legislation provides settlement with the Indians for 104,420 acres of the best bottomland on this reservation consisting of 1,614,682,000 acres of Indian-owned land. The Government is taking this land for a reservoir back of the Oahe Dam on the Missouri River. The Oahe Dam is 1 of 4 large earthen dams to be constructed on the main stem of the Missouri River in North and South Dakota, to provide flood control for the basin States below Yankton and Sioux City. With Fort Peck, these dams are intended to store flood waters, to generate power for the

area, and to furnish some irrigation and some navigation below Sioux City, Iowa.

The Missouri River development program is a tremendous program involving a basin which embraces one-sixth of the entire continental United States, but more than that, it involves the lives and future of many hundreds of Indians, 2,540 of whom live on this particular reservation. There are 4,360 Indians enrolled here, 2,540 living here, constituting 575 families of which 200 families must be removed from the taking area.

When these 200 families are moved back and crowded into the remaining area, it will disrupt the present living of the entire group. In order to make it possible for those who are presently living on lands not being covered, to be able to assimilate the 200 families removed from the taking area and make it possible for them to get their feet on the ground and become assimilated into the balance

of the reservation, the subcommittee worked out a program of rehabilitation. This program is intended to assist part of them to go into the livestock business; build up their homes and ranch units; some of them to go into farming; some of them to be trained through vocational training and higher education which will be financed out of this rehabilitation program. Some can go into business enterprises either for themselves or be employed by someone else, which will help them get off the reservation where they cannot presently earn a living; and to become trained and located in a community where they can make a living, where they can raise their families and where they can become assimilated so that in 10 or 15 years this reservation will be in a position to come before the Congress and ask for termination of Federal supervision the same as the reservations that this Congress has already acted upon.

The subcommittee took into account the fact that there are many Indians on this reservation who are beyond the age of effective rehabilitation; it took into consideration the fact that there are many who cannot profitably be reestablished, and provided for those families a program of assistance. A program of welfare has been established from the interest on a \$2 million perpetual investment.

I refer you to the Committee report wherein the Indian program of rehabilitation for these people has been set out in detail. As an illustration of the good intention and desire of these Indian people to work out this program and to get the greatest results from it, they have asked that these funds be earmarked for these various purposes and be used for those purposes as nearly as possible. The Tribal Council of the reservation has spent many, many hours in working and planning

and studying to bring before this Congress the most efficient program possible. I hope that this Congress will see fit to go along with them and to help get them in shape, financially, and economically, and intellectually, so that they, too, may be able to get out from under the yoke of the Indian Department before too long.

Actually, the reservation itself receives no benefit whatever from the Missouri River Development Program. Actually, it takes from the reservation the best land, the winter protection for the livestock--the natural habitat of the Indian families--a great source of their revenue; it destroys their roads; their agency headquarters will be under 40 feet of water; it disrupts their homes, their schools, their churches, their hospitals; it disrupts their entire mode of living. Unless this program is approved, these people stand to suffer irreparable damage.

The Indians will be moved back up on to the open prairie without protection from the elements. Dams and cisterns will have to provide their water supply. Their way of life will be completely changed. If, however, this settlement program works out as the Indians and the subcommittee have set it up, these people will become established, part of them will be relocated off of the reservation and all of them will be placed in shape to handle their own affairs without supervision from the Indian Department in a period of possibly 10 or 15 years.

CONGRESSIONAL RECORD - HOUSE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
100 Cong. Rec. 13152 (August 3, 1954)

Sec. II. The United States agrees to pay for all said tribal, allotted, assigned and inherited lands or interest in land, together with all improvements thereon (except the Agency Hospital); and for the stumpage value of standing timber and for severance damages to individual owners within the taking area; and for the bed of the Missouri River so far as it is the eastern boundary of said Cheyenne River Reservation, the sum of \$2,614,778.95. And the United States further agrees to pay for overall tribal severance damages outside the taking area for Oahe Reservoir and for the loss of the annual supply of timber and for the loss of wildlife and wild fruits, the sum of \$3,973,076, in all, \$6,587,854.95, which sum shall be in final and complete settlement

of all claims, rights and demands of said tribe or allottees or heirs thereof arising out of the construction of the Oahe project, and shall be deposited to the credit of said tribe in the Treasury of the United States, to draw interest on the principal thereof at the rate of 4 percent per annum until expended: Provided, That the said tribal council shall submit to the Secretary of the Interior for his approval a copy of the schedules on which the sum of \$2,614,778.95 is based, as itemized in this section, and when such schedule is approved by the Secretary of the Interior it shall be the final schedule on which the said sum shall be distributed to or credited to the owners of said lands.

HEARINGS
BEFORE THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE

August 17, 1954

H. R. 2233

Page 3-4

What I am willing to recommend is that as far as I am concerned, we have had hearings on it, we have a hearing record; the full damages for the taking, full compensation, is for \$5,384,000.14 and that is worked out in connection with their various claims and appraisals. It is higher than either the Army Engineers' appraisal or the MRB, which is the Missouri River Board appraisals, set up by the Department of the Interior. It is higher than that but it is considerably lower than the Indians think they ought to have. This takes

care of severance damage, it takes care of all the elements of value in the property. I wanted it in one lump rather than to take the direct benefits and then the indirect benefits, because the Army said the indirect benefits they were claiming were actually duplication and instead of paying for the compensation that they were entitled to, they were doubling it up. In addition, they should have some money because they are in pretty bad condition and that would be used for rehabilitation purposes.

I thought we would follow somewhat the same schedule we followed on the Navajos.

100 Cong. Rec. 14979 (August 18, 1954)

Mr. WATKINS. With respect to the appraised value of the land being taken for this project, I am advised the Army engineers' report did not take into consideration any severance damage. There is a case for severance damages in the project. One of the main portions of the claim is based on ownership of land on river bottom which is good for agriculture. It can be irrigated in time. It contains much timber. In addition, the Indians owned lands at a higher elevation. That land would not be worth nearly as much if there were taken away from them the bottom land where their livestock could be wintered. So there should be taken into consideration the severance damage.

I have had some experience in condemnation suits and right-of-way suits over the years, where lands had been used together

as are these two types of lands used by the Indians. In such case severance damage is involved. That severance damage had not been taken into consideration. The Army engineers gave the lowest appraisal. The Missouri river Investigation Board had the next highest, and the Indians gave the highest figures on the direct benefits. In addition, the Indians claimed \$6 million in indirect benefits. I felt that constituted a duplication in large measure of the values that had been given by the Army engineers. For that reason I was not willing to vote for a bill which recognized those indirect benefits. However, severance damages should be included with direct costs and damages. I included that in the tribal claim for the loss of fruits, timber and so forth, in the lower lands. Therefore, I felt the amount allowed for damage could be justified. The amount allowed for rehabilitation is largely based on a per

capita amount, the same as was given to the Navahos and Hopis.

Pub. L. No. 776, 68 Stat. 1191 (1954).

AN ACT

To provide for the acquisition of lands by the United States required for the reservoir created by the construction of Oahe Dam on the Missouri River and for rehabilitation of the Indians of the Cheyenne River Sioux Reservation, South Dakota, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this agreement between the United States of America and the Sioux Indians of Cheyenne River Reservation in South Dakota, Witnesseth, That this agreement when enacted by Congress and when confirmed and accepted in writing by three-quarters of the adult Indians of the Cheyenne River Reservation in South Dakota, as shown by the tribal rolls of the said reservation, does hereby convey to the United

States all tribal, allotted, assigned, and inherited lands or interests within said Cheyenne River Reservation belonging to the Indians of said reservation, which lands are required by the United States for the reservoir to be created by the construction of the dam across the Missouri River in South Dakota, now known as Oahe Dam, including such lands along the margin of said proposed reservoir as may be required by the Chief of Engineers, United States Army, for the construction, protection, development, and use of said reservoir all as described in part II of this agreement, subject, however, to the conditions of this agreement hereinafter set forth: Provided, That the effective date of this Act shall be the date when the Secretary of the Interior shall by proclamation declare that this agreement has been ratified and approved in writing by three-quarters of the

adult members of said Indians as above defined.

SECTION II. The United States agrees to pay, out of funds appropriated for construction of the Oahe project, as just compensation for all lands and improvements and interests therein (except the agency hospital) conveyed pursuant to section I of this Act; and for the bed of the Missouri River so far as it is the eastern boundary of said Cheyenne River Reservation, the sum of \$5,384,014; which sum shall be in final and complete settlement of all claims, rights, and demands of said Tribe or allottees or heirs thereof arising out of the construction of the Oahe project, and shall be deposited to the credit of said Tribe in the Treasury of the United States, to draw interest on the principal thereof at the rate of 4 per centum per annum until expended: Provided, That the said Tribal Council with the approval of the

Secretary of the Interior shall distribute the sum of \$2,250,000 in accordance with the revised appraisal of the Missouri River Basin investigation staff of the Department of the Interior.

SECTION III. The United States further agrees to appropriate, and the Secretary of the Army is authorized and directed to make available from sums so appropriated to be charged against the cost of construction of the Oahe project, further additional appropriations for the special purposes of relocating and reestablishing the Indian cemeteries, tribal monuments and shrines within the taking area for said reservoir described in Part II of this Act as the Tribal Council of said Indian Tribe shall select and designate, which sums shall be expended on the recommendation of the Tribal Council with the approval of the Secretary of Interior.

SECTION IV. The United States further agrees to appropriate, and the Secretary of the Army is authorized and directed to make available from sums so appropriated to be charged against the cost of construction of the Oahe project, further additional appropriations which shall be expended for the relocation and reconstruction of Cheyenne River Agency, relocation and reconstruction of schools, hospitals, service buildings, agents and employees quarters, roads, bridges and incidental matters or facilities in connection therewith.

SECTION V. In addition to the sum set out in section II hereof, the United States further agrees that it will appropriate and make available a further sum in the total amount of \$5,160,000 which shall likewise be deposited in the Treasury of the United States to the credit of said Indian Tribe to draw interest on the principal thereof at the rate

of 4 per centum per annum until expended for the purpose of complete rehabilitation for all members of said Tribe who are residents of the Cheyenne River Sioux Reservation at the time of the passage of this Act, whether or not residing within the taking area of the Oahe Project, and for relocating and reestablishing members of said Tribe who reside upon such lands conveyed to the United States to the extent that the economic, social, religious, and community life of all said Indians shall be restored to a condition not less advantageous to said Indians than the condition that the said Indians now are in: Provided, That said fund provided for in this section shall be expended upon the order and direction of the Tribal Council of said Tribe, with the approval of the Secretary of the Interior, for the purposes set forth in this section: Provided further, That the authorization contained in section XVI hereof

shall remain available for a period not to exceed ten years from the effective date of this Act.

SECTION VI. The United States agrees that all mineral rights of whatsoever nature at or below the surface within the taking area as described in Part II hereof shall be and hereby are reserved to said Indian Tribe or individual owners or holders of lands or interests in lands as their interests may appear under section I hereof, subject to future extraction and use by said Tribe or said members thereof or their heirs, successors, or assigns, but also subject to all reasonable regulations which may be imposed by the Chief of Engineers, United States Army, for the protection and use by the United States of the taking area for the purposes of the Oahe Dam and Reservoir Project.

SECTION VII. The members of said Indian Tribe shall have the right without charge to cut and remove all timber and to salvage any portion of the improvements within said taking area either by demolition or removal, and the owners of the land whereon said improvements stand shall have a prior right to such salvage but if said right is waived or not exercised before the date of the notice provided for in section IX hereof, the Tribal Council shall have the right to designate others to demolish or remove said timber and improvements or in the discretion of the Tribal Council, said demolition or removal may be undertaken and carried out by said Tribal Council: Provided, That the salvage permitted by this section shall not be construed as "double compensation" as set out in section 2(b)(2) of Public Law 870, Eighty-first Congress.

SECTION VIII. The United States and the Indian parties to this agreement recognize

that a hazard to livestock is created by the rise and fall of the waters to be impounded in Oahe Reservoir. They also recognize that said hazard is not subject to exact determination at this time, therefore the parties to this agreement agree that all hazards which may develop when the annual rise and fall of Oahe Reservoir can reasonably be determined shall be met by the United States by such protective measures as may be necessary to minimize losses to the Indian parties hereto as to livestock only.

SECTION IX. Members of said Indian Tribe now residing within the taking area of the project shall have the right without charge to remain on and use the lands hereby conveyed as said lands are now being used from and after the effective date of this Act to the point in time where the gates of Oahe Dam are to be closed for the impoundment of the water of the Missouri River. The Chief of Engineers shall

give public notice one year in advance of the prospective date of the closing of said gates for said purpose and all improvements of whatever nature, all timber of whatever kind or class shall be salvaged or removed or else shall be considered as abandoned by the Tribe or by the individual owners at a date six months subsequent to the date of the notice given by the Chief of Engineers. All individuals and personal property shall remove or be removed from the taking area before the expiration of the one year's notice given by the Chief of Engineers as aforesaid. And the United States shall not be liable for any loss of life or property not so removed from the taking area from and after the expiration of said notice.

SECTION X. After the Oahe Dam gates are closed and the waters of the Missouri River impounded, the said Indian Tribe and the members thereof shall have the right to graze

stock on the land between the level of the reservoir and the taking line described in Part II hereof. The said Tribal Council and the members of said Indian Tribe shall have, without cost, the right of free access to the shoreline of the reservoir including the right to hunt and fish in and on the aforesaid shoreline and reservoir, subject, however, to regulations governing the corresponding use by other citizens of the United States.

SECTION XI. The United States through the Department of Interior shall render all aid and assistance to individual members of said Tribe whose lands are within the said taking area for the purposes of purchasing land in the name of the United States for said individuals and the United States shall reconvey said lands under trust patent to the individual owners upon the selection by said owners of the land which they decide to have purchased for them. The said trust patents

shall be in form and effect the same as corresponding trust patents heretofore issued to said individuals. The holders of exchange assignments within the said taking area shall be regarded as holders of trust patents and shall be accorded the same privileges and procedures as holders of land held in trust as in this section provided.

The funds for the purchase of such substitute land in all cases shall be provided by the individual apply for such purchase and reconveyance as is herein described, out of monies placed to his credit for the transfer of his lands, improve ~~as~~ and timber under the authority of this agreement and the subsequent Act of Congress herein provided for but no service charge shall be made by the United States in addition to the cost of the substitute allotment. The lands so selected and purchased as substitute allotments may be either within the boundaries of the Cheyenne

River Reservation as diminished by this agreement or outside said reservation as may meet the desires of the individuals involved in the several transactions: Provided, That no purchase of lands outside the Cheyenne River Reservation shall affect the existing status of such lands, interests or rights therein, or improvements thereon, with respect to taxation. No prior Act of Congress or Departmental regulation shall be held to be a bar to the full operation of this section, nor shall the Tribal Constitution, ordinance or resolution thereunder be held to be a bar to the full operation of this section, numbered XI.

SECTION XII. No part of any expenditure made by the United States under any or all of the provisions of this agreement and the subsequent acts of ratification shall be charged as an offset or counter claim against any tribal claim which has arisen under any

treaty, law, or executive order of the United States prior to the effective date of taking of said land as provided for in section I hereof and the payment of Sioux benefits as provided for in section 17 of the said Act of March 2, 1889 (25 Stat. 888), as amended, shall be continued under the provision of section 14 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), on the basis now in operation without regard to the loss of tribal land within the taking area under the provisions of this agreement.

SECTION XIII. The United States agrees to reimburse the said Tribal Council for expenses incurred by it and caused by, or incident to, the negotiations which have led up to the making and ratification of this agreement: Provided, That such reimbursable expenses do not exceed in the aggregate \$100,000, of which not more than \$50,000 shall be payable as attorney fees. The Tribal

Council shall send a statement to the Secretary of the Army setting out said expenses up to the date of the proclamation to be issued by the Secretary of the Interior declaring that the Act of Congress approving this agreement is in full force and effect. The Secretary of the Army shall forward said statement to the Congress for appropriation together with his recommendations.

SECTION XIV. Holders of inherited lands or interests in lands may consolidate their interests by and between themselves and the total proceeds in the hands of any individual held by such consolidation of interests may be used by any individual holder of the same for purchase of substitute lands as in section XI provided.

SECTION XV. The right of any individual member of said Indian Tribe to reject the final appraisal made on his land and improvements shall be preserved and, if any

individual does reject such final appraisal, he shall file notice of such rejection by notice in writing to the Chief of Engineers, United States Army, who shall thereupon file a proceeding in the United States District Court of the District of South Dakota as in a condemnation proceeding and jurisdiction is hereby conferred upon said Court to determine, by procedure corresponding to a condemnation proceeding, the value of said land and improvements and the said Tribal Council shall deposit with the clerk of said court the full amount set out in the final appraisal which was previously offered to said individual, which fund shall be used in payment in full or in part of the final judgment of said United States District Court. Cost of such proceedings shall be borne by the United States and the individual involved shall be entitled to counsel at his own expense. In the event the amount of the appraisal so

deposited in said Court is not enough to cover the final judgment in said proceeding, the United States shall pay such difference from the fund of \$5,384,014 established under section II, hereof, into the hands of the clerk of said Court and thereupon title shall vest in the United States.

SECTION XVI. There is hereby authorized to be appropriated not to exceed \$10,644,014, as provided by sections II, V, and XIII, exclusive of the sums to be charged against the cost of construction of the Oahe project as provided in sections III and IV hereof.

PART II

The lands conveyed by this agreement are the following tracts of land all in the State of South Dakota:

Township 5 north, range 30 east,
Black Hills meridian

Section 5: Northwest quarter northwest quarter northeast quarter; north half

northwest quarter; north half southeast quarter northwest quarter; northwest quarter southwest quarter northwest quarter.

Section 6: Northeast quarter northeast quarter; northeast quarter southeast quarter northeast quarter; north half northwest quarter northeast quarter; east half northeast quarter northwest quarter.

Township 6 north, range 29 east,
Black Hills meridian

Section 1: Lots 1, 2, 5, and 6.

Township 6 north, range 30 east,
Black Hills meridian

Section 28: Southwest quarter southeast quarter.

Section 33: Northeast quarter northwest quarter northeast quarter; southeast quarter northwest quarter.

Township 7 north, range 29 east,
Black Hills meridian

Section 21: All.

Section 34: Southeast quarter.

Township 7 north, range 30 east,
Black Hills meridian

Section 19: Lots 1, 2, and 3.

Section 20: Lot 1.

Section 29: Lots 1, 2, and 3.

Section 30: Northeast quarter northeast quarter; each half southeast quarter northeast quarter; north half northwest quarter northeast quarter; north half northeast quarter northwest quarter.

Section 31: West half northeast quarter; lots 6, 7, and 8.

Section 32: Lot 1.

Township 8 north, range 23 east,
Black Hills meridian

Section 1: Lots 5 and 6.

Township 9 north, range 23 east,
Black Hills meridian

Section 36: South half southwest quarter and lots 2, 3, and 4.

Township 9 north, range 24 east,
Black Hills meridian

Section 12: South half south half northeast quarter; northwest quarter southeast quarter; southeast quarter northeast quarter southwest quarter; east half southwest quarter southwest quarter; lots 2, 3, 4, and 5.

Section 13: West half northwest quarter; northwest quarter southwest quarter; lots 6, 7, 8, and 9.

Section 14: South half; south half northwest quarter; west half southwest quarter northeast quarter; east half southeast quarter northeast quarter.

Section 15: Southeast quarter northeast quarter; south half southeast quarter southeast quarter.

Section 22: North half northeast quarter northeast quarter; northeast quarter southeast quarter; southeast quarter northwest quarter southeast quarter; lots 2 and 3; lot 1 except ten acres in the form of a square situated in the northwest corner thereof.

Section 23: Northwest quarter; northwest quarter northeast quarter; lots 6, 7, 8, and 9.

Section 27: Lots 5, 6, 8, 9, and 10; lot 7, except ten acres in the form of a square, situated in the northwest corner thereof.

Section 28: South half southeast quarter; south half north half southeast quarter.

Section 31: Southeast quarter northeast quarter; lots 6, 7, 8, and 9.

Section 32: South half south half northwest quarter; lots 8 and 9.

Section 33: Lots 5 and 6.

Section 34: Northwest quarter southeast quarter northwest quarter; lots 1, 2, and 3.

Township 123 north, range 79 west, fifth principal meridian.

Section 24: Lot 4.

Section 25: Lot 1.

An unsurveyed island in the Missouri River situated opposite sections 3 and 4 of township 9 north, range 29 east, Black Hills meridian.

An unsurveyed island in the Missouri River, situated opposite sections 2, 3, and 4 of township 9 north, range 29 east of the Black Hills meridian, also sections 21, 22, and 23 of township 115 north, range 81 west of the fifth principal meridian.

An unsurveyed island in the Missouri River, situated opposite sections 1 and 2 of township 9 north, range 29 east, Black Hills meridian.

An unsurveyed island in the Missouri River, situated opposite sections 1 and 2 of township 9 north, range 29 east of the Black Hills meridian, also sections 23 and 24 of township 115 north, range 81 west and section 19 of township 115 north, range 80 west of the fifth principal meridian.

An unsurveyed island in the Missouri River, situated opposite sections 14, 15, 16, and 21 of township 10 north, range 28 east of the Black Hills meridian, also sections 33, 34 and 35 of township 116 north, range 82 west of the fifth principal meridian.

An unsurveyed island in the Missouri River, situated opposite sections 19, 29, 30, and 32 of township 10 north, range 29 east of the Black Hills meridian, also section 1 of township 115 north, range 82 west of the fifth principal meridian.

An unsurveyed island in the Missouri River, situated within section 12, township 12 north, range 30 east, Black Hills meridian, between Lafferty Island, a surveyed island, and the right bank of said Missouri River.

An unsurveyed island in the Missouri River, situated opposite sections 12, 13, 14, and 23 of township 12 north, range 30 east of the Black Hills meridian, also sections 29,

30, 31 of township 118 north, range 79 west of the fifth principal meridian.

An unsurveyed island in the Missouri River, situated opposite sections 22, 27, 28, and 33 of township 16 north, range 31 east of the Black Hills meridian, also sections 5, 6, and 7 of township 121 north, range 78 west of the fifth principal meridian.

An unsurveyed island in the Missouri River, situated opposite sections 14, 15, and 22 of township 16 north, range 31 east of the Black Hills meridian, also section 5 of township 121 north, range 78 west and sections 28, 32, and 33 of township 122 north, range 78 west of the fifth principal meridian.

The following described land is described in the foregoing reservation description, but is owned by Indian fee patents to individual Indians.

Township 9 north, range 24 east,
Black Hills meridian

Section 13: West half northwest quarter;
northwest quarter southwest quarter; lots 6,
7, and 9.

Section 14: East half southeast quarter.

Township 10 north, range 28 east,
Black Hills meridian

Section 10: South half southwest quarter.

Section 15: Lots 2 and 3.

Township 12 north, range 30 east,
Black Hills meridian.

Section 11: South half south half.

Section 12: South half south half
southwest quarter southwest quarter; lots 3,
5, and 6.

Section 13: Lots 1 and 2.

Section 14: North half; east half
northwest quarter southeast quarter; northeast
quarter southwest quarter southeast quarter;
lot 1; the north six hundred and sixty feet of
lot 2.

Township 14 north, range 31 east,
Black Hills meridian

Section 11: Lot 4.

Township 15 north, range 31 east,
Black Hills meridian

Section 3: Southwest quarter northwest
quarter; lots 1, 2, and 3.

Section 13: West half east half southeast
quarter southwest quarter.

Township 16 north, range 29 east,
Black Hills meridian

Section 17: North half northeast quarter
southeast quarter; east half northwest
quarter; north half northeast quarter
southwest quarter; northwest quarter northeast
quarter; north half southwest quarter
northeast quarter; southwest quarter southwest
quarter northeast quarter; northwest quarter
northwest quarter southeast quarter.

Section 18: East half southwest quarter
southeast quarter.

Section 19: Northeast quarter northeast
quarter.

Section 20: North half southwest quarter;
north half southwest quarter southwest
quarter; southeast quarter southwest quarter
southwest quarter.

Township 16 north, range 30 east,
Black Hills meridian

Section 7: East half east half.

Section 8: North half south half
northwest quarter.

Section 11: East half east half northeast
quarter; northeast quarter northeast quarter
southeast quarter; east half southeast quarter
southwest quarter.

Section 12: West half northwest quarter.

Township 16 north, range 31 east,
Black Hills meridian

Section 28: Northwest quarter; west half
northeast quarter; lots 1 and 2.

Approved September 3, 1954.

Page 1

(_____(Enrollment No._____)

As an adult Indian whose name appears on
the tribal rolls of the Cheyenne River
Reservation in South Dakota, you are eligible
to any whether you approve or disapprove
Public Law 776, 83d Congress. The major
provisions of the law are listed below.
Please mark X in one of the boxes below, sign
your name, and return the ballot to the
Superintendent of the Cheyenne River
Reservation not later than January 5, 1955.
If you cannot write, make a thumbprint for
your signature, have two other persons print
your name, and sign their own names as
witnesses.

Area Director

B A L L O T

_____ I approve Public Law 776, 83d
Congress.

_____ I do not approve Public Law 776, 83d
Congress.

Signature

The major provisions of Public Law 776 as follows:

1. The United States will pay to the Indian owners \$2,250,000 for the Indian lands taken for the Oahe Project. Each Indian who owns land in the taking area will receive slightly more than the amount of the appraisal on his land by the Missouri

River Basin Investigations staff. Any Indian who is not satisfied with the appraisal of his land may have its value fixed by the federal court, and any additional payment allowed by the Court will be taken from the fund described in the next paragraph.

2. The United States will pay \$3,134,014 for indirect damages caused by taking the Indian lands for the Oahe Project. This money will be spent in accordance with a plan prepared by the tribe and approved by the Secretary of the Interior.
3. The United States will provide \$5,160,000 for rehabilitating members of the tribe who were residents of the reservation on September 3, 1954. This includes members who lived inside the taking area and also members who lived outside the taking area, but does not include members who are not residents of the reservation.

4. Mineral rights will be kept by the Indian owners.
5. Timber and improvements may be removed from the taking area by the Indians.
6. Indians may graze livestock on the part of the land not flooded and may hunt and fish in the taking area without charge.
7. Indians whose lands are taken may use money paid by the United States to purchase other lands. Title may be taken by the United States in trust if the Indians so wish.
8. The United States will relocate and reconstruct the Cheyenne River Agency, schools, hospitals, service buildings, employee quarters and roads that are flooded.
9. The Indians may continue to live on the land to be flooded until the gates of the dam are closed.

Certificate of Election on Approval
of P.L. 775 (January 20, 1955)

CERTIFICATE

We the undersigned, a committee of two appointed by the Area Director of the Aberdeen Area Office and two appointed by the Chairman of the Cheyenne River Sioux Tribal Council for the purpose of counting and recording the votes of adult members of the Cheyenne River Sioux Tribe in connection with Public Law No. 776, 83rd Congress, hereby certify that we have counted all votes received up to 4:00 P.M. January 20, 1955 and that we verily believe that we have correctly identified each and every person who has submitted his ballot and that we have correctly recorded and tallied each and every ballot and that all of the ballots received have been tallied as follows:

1.	For approval of P.L. No. <u>776</u>	1,790
2.	For disapproval [sic] of P.L. No. <u>776</u>	143
3.	Spoiled ballots, either not signed or vote not indicated	9
Total ballots cast		1,942

We further certify that the list of eligible voters which was given to this committee contains the names of 2,375 persons and that the total number of favorable votes shown opposite "1" above is 75.35 percent of the adult members of the Cheyenne River Sioux Tribe who are eligible to participate in the ballot.

For the Bureau of Indian Affairs

/s/ Paul H. Dillon
Paul H. Dillon

/s/ George B. McKay
George B. McKay

For the Cheyenne River Sioux Tribal Council

/s/ Donald G. LaPlante
Donald G. LaPlante

/s/ William Lends His Horses
William Lends His Horses

Cheyenne Agency, South Dakota

January 20, 1955

CERTIFICATION

I hereby certify that this is a true and correct copy.

/s/ W.P. Hughes
W.P. Hughes, Acting Superintendent

PTA JJ

DEPARTMENT OF THE ARMY

Omaha District Corps of Engineers

6014 U.S. Post Office and Court House

Omaha, Nebraska 68102

9 March 1976

Mr. Michael B. Jandreau, Chairman
 Lower Brule Sioux Tribe
 Lower Brule, South Dakota 57548

Re: Tribal Hunting, Fishing and
 Trapping Ordinance

Page 5
 ¶ "e."

e. That the Ordinances of the Lower Brule Sioux Tribe have no force and effect over the lands formerly owned by the Tribe and its members which were acquired by the United States for the Ft. Randall and Big Bend Projects.

Exhibit 1

CONSTITUTION AND BY-LAWS
 OF THE CHEYENNE RIVER SIOUX TRIBE
 SOUTH DAKOTA

APPROVED DECEMBER 27, 1935

AMENDED FEBRUARY 11, 1966

AMENDED JUNE 18, 1980

CONSTITUTION AND BY-LAWS OF THE CHEYENNE
 RIVER SIOUX TRIBE OF SOUTH DAKOTA

PREAMBLE

We, the Sioux Indians of the Cheyenne River Reservation in the State of South Dakota in order to establish our tribal organization, to conserve our tribal property, to develop our common resources, to establish justice, and to promote the welfare of ourselves and our descendants, do hereby ordain and establish this constitution and by-laws for our tribal council as a guide to its deliberations.

ARTICLE--TERRITORY

The jurisdiction of the Cheyenne River Reservation Sioux Tribe of Indians shall extend to the territory within the original confines of the diminished reservation boundaries, which are described by the act of March 2, 1889 (25 Stat. L. 888), and including trust allotments without the herein mentioned boundaries and such other lands as may be hereafter added thereto under any law of the United States, except as otherwise provided for by law.

. . .

ARTICLE IV--POWERS OF SELF-GOVERNMENT

Section 1. The tribal council of the Cheyenne River Reservation shall exercise the following powers vested in the present council under existing laws or conferred by the act of June 18, 1934 (48 Stat. 984) and acts amendatory thereof as supplemental thereto, subject to any limitations imposed by the

statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this constitution and the attached by-laws.

(a) To enter into negotiations with the Federal, State, and local Governments on behalf of the tribe.

(b) To present and prosecute any claims or demands of the Cheyenne River Sioux Tribe of Indians. It shall have the right to assist members of the tribe in presenting their claims and grievances before any court or agency of government. It shall have the right to employ attorneys of record or representatives for such services, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

(c) To approve or veto any sale, disposition, lease or encumbrance of tribal lands, interests in land or other tribal assets which may be authorized or executed by

the Secretary of the Interior, the Commissioner of Indian Affairs, or any other official or agency of government, provided that no tribal lands shall ever be sold, except those tribal lands located outside of the Cheyenne River Reservation boundary, and outside of the Consolidation Area boundary lines established as of the date of the approval of Public Law 88-418 (August 11, 1964), and set out in tribal council action by Resolution No. 92-64 (September 2, 1964). Tribal lands may not be encumbered or leased for a period exceeding five years, except as provided for in Article VIII, Section 3.

(d) To confer with the Secretary of the Interior upon all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of Budget and Congress.

(e) To receive voluntary relinquishments of allotments and heirship lands and to make

assignments of tribal land to members of the Cheyenne River Sioux Reservation in conformity with article VIII of this constitution.

(f) To select subordinate boards, officials, and employees not otherwise provided for in this constitution and to prescribe their tenure and duties and to establish district councils; to authorize and establish any association or organization having for its purpose and sole object the benefit of the members of the Cheyenne River Sioux Tribe. Such association or organization shall have the right to engage in collective or cooperative bargaining or marketing, or purchasing of supplies, crops, equipment, seed, machinery, building or livestock, the council reserving the right to establish ordinances covering the activities of such association or organization, and to enforce the observance of such ordinances.

(g) To administer any funds or property within the control of the tribe; to make expenditures from available funds for public purposes, including salaries or other remuneration of tribal officials or employees. Such salaries or remuneration shall be paid only for services actually authorized in a regular and legal manner and actually rendered. All expenditures from the tribal council fund shall be by resolution duly passed by the council to that effect and the amount so paid shall be a matter of public record at all times.

(h) The council shall have the power when just cause or extreme emergency exists, which shall create a hazard to the peace and safety of the tribe as a whole or to the individual members thereof, to require the individual members of the tribe or other residents upon the reservation to assist with community labor.

(i) To create and maintain a tribal council fund by accepting grants or donations from any person, State, or the United States, or by levying assessments of not less than ten cents, and not to exceed one dollar (\$1.00) per year, per capita on the qualified voters of the Cheyenne River Sioux Tribe, and to require the performance of community labor in lieu thereof, provided the payment of such per capita levy shall be made before any person shall vote in any election held more than six months after the date of said levy; and to levy taxes and license fees subject to review by the Secretary of the Interior, upon non-members doing business with the reservation. Any money so collected shall be disposed of as provided for in article IV, section 1 (g) of this constitution.

(j) To provide by ordinance, subject to review by the Secretary of the Interior, for removal or exclusion from the territory of the

Cheyenne River Sioux Tribe of any non-members whose presence may be injurious to the members of the tribe morally or criminally.

(k) To promulgate ordinances for the purpose of the safe-guarding the peace and safety of residence of the Cheyenne River Reservation, and to establish courts for the adjudication of claims or disputes arising among the members of the tribe and for the trial and punishment of members of the tribe charged with the commission of offenses set forth in such ordinances.

(l) To purchase under condemnation proceedings, land or other property needed for public purposes, subject to the approval of the Secretary of the Interior.

(m) To protect the public health and morals and to promote the public welfare by regulating the use and disposition of property of members of the tribe.

(n) To regular the inheritance of property, real and personal, other than allotted lands, within the territory of the Cheyenne River Sioux Reservation, subject to review by the Secretary of the Interior.

(o) To provide by ordinance for the appointment of guardians for minors and mental incompetents, subject to the approval of the Secretary of the Interior.

(p) To adopt resolutions regulating the procedure of the council itself and of other tribal agencies and tribal officials of the reservation.

Sec. 2. Manner of review--Any resolution or ordinance which, by the terms of this constitution, is subject to review by the Secretary of the Interior, shall be presented to the superintendent of the reservation, who shall, within ten (10) days thereafter, approve or disapprove the same. If the superintendent shall approve any ordinance or

resolution, it shall thereupon become effective, but the superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may within ninety (90) days from the date of enactment, rescind the said ordinance or resolution for any cause, by notifying the tribal council of such rescission.

If the superintendent shall refuse or approve any resolution or ordinance submitted to him, within ten days after its enactment, he shall advise the tribal council insufficient it may, by the majority popular vote, refer the ordinance or resolution to the Secretary of the Interior, who may, within ninety (90) days from the date of its enactment, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

Sec. 3. Future powers.--The council shall have the power to act on such other necessary

or emergency cases as may be delegated to the tribe by the Secretary of the Interior, or by any other official or agency of the Government.

Sec. 4. Reserved powers.--The foregoing enumeration of powers shall not be construed to limit the powers of the tribal council, but all powers of local government not expressly entrusted to the council by this constitution and by-laws shall be reserved to the legal voters of the Cheyenne River Tribe. Such powers may be exercised through appropriate by-laws and constitutional amendments.

. . .

ARTICLE V--TRIBAL COURT (Judicial Code)

Section 1. (a) It shall be the duty of the council to provide, through the necessary by-laws or ordinances, for the establishment of a tribal court upon the reservation.

(b) This court shall have jurisdiction over all such petty offenses not falling

within the exclusive jurisdiction of Federal or State courts, as may be provided in the ordinances of the tribe.

(c) This court shall have jurisdiction over all Indians upon the reservation and over such disputes or lawsuits as shall occur between Indians on the reservation or between Indians and non-Indians where such cases are brought before it by stipulation of both parties provided that jurisdiction over Indian employees of the Indian Service shall be subject to rules and regulations prescribed by the Secretary of the Interior.

(d) The duties and jurisdiction of this court shall be more fully prescribed by appropriate by-laws or ordinances.

Sec. 2. It shall be the duty of the council to establish by ordinance a tribal police force which shall have full jurisdiction upon the reservation, the authority and duties of this police force

under which it will function may be outlined by the council, such police to be employees of the council and shall be an agency of the tribal court.

ARTICLE VII--LAW OF PROPERTY

Section 1. It shall be the duty of the council to pass rules and regulations to prevent unauthorized prospecting or mining of any kind upon the reservation and to see that such rules and regulations are properly enforced.

Sec. 2. The council shall pass ordinances for the control of hunting and fishing upon the reservation, not conflicting with any of the Federal or State game laws. The council shall enforce such ordinances and cooperate with Federal and State authorities for protection of game on the reservation. Further, the council may issue licenses for hunting and fishing and shall establish and act for same.

[Page 1]

Tribal
License Sales

These licenses are valid only on tribal land. The appropriate state license is required on all other land within the reservation boundaries. That applies to everyone including tribal members.

Be careful to select the right license and/or license book. They are not clearly marked.

Non-members are required to follow all state, federal and tribal regulations.

Big Game:

- (1) Nonmembers wishing to hunt deer and antelope are required to purchase both licenses.
- (2) Nonmember deer licenses should specify "Any Whitetail Only".

- (3) Members are entitled to one deer and one antelope tag for the \$12 fee.
- (4) Along with the license be sure to include tag and Hunter Information Card.

United States Army Corps of Engineers,
Omaha District, Lake Oahe,
Oahe Dam Boating and Recreation Manual

March 1984
Sheet 1 of 30, ¶ 10.

10. Hunting and fishing is allowed on Lake Oahe and project land, unless posted otherwise, in accordance with the rules and regulations established by the North Dakota Game and Fish Department, South Dakota Game Fish and Parks Department and the U.S. Fish and Wildlife Service. These regulations may change annually, so hunters and fishermen are advised to review current regulations before engaging in these forms of recreation.

JURISDICTION MEETING

1:05 p.m.

01-22-85

PRESENT: Ronald W. Lee, Natural Resources
Dept. Director
Brenda Dupris, Tribal Court
Administrator
Jim Fougere, Game Fish & Parks
Wildlife Biologist
Byron In The Woods, Pesticide
Enforcement Officer
LeNeta R. Miner, Tribal Land
Director

The meeting was not officially called to order as all who were asked to be present were not in attendance but, the following was discussed and decided on.

Ron informed Brenda that they will meet with the Land and Natural Resources Committee on Friday, January 25, 1985 at 9:00 a.m., to go over the Hunting and Fishing code.

Discussion was held concerning Tribal jurisdiction over hunting and fishing within the exterior boundaries of the Cheyenne River Indian Reservation. Everyone hunting within

the reservation is required to buy a tribal license. Jim stated he talked with Game, Fish & Parks personnel in Mobridge regarding the state issuing licenses to hunt, etc. on the reservation. Discussion was then held on the fact that the Cheyenne River Sioux Tribe does not have to become involved with the state, as we plan to go for total jurisdiction as far as hunting, fishing, etc., due to the Solem vs Bartlett case, and other Supreme Court Rulings. Following discussion it was decided to go with plan A, which would be total jurisdiction; plan B, would be to make agreements with the state; and plan C, would be to leave as is.

It was also brought up that there are still gray areas in the Supreme Court Ruling, but these would come to light when violators are caught and prosecuted in court.

The matter of the Game Wardens receiving training was brought up. Although it was felt

that they should have more training for their jobs, funds are needed to train them. Budgets have been cut and at present they are unable to patrol as they are financially unable to purchase gasoline. Can purchase only on a limited basis.

/s/

L. Miner

PTA LL

September 15, 1986, letter from Corps of Engineers to Jeff Stingley, Secretary, Game, Fish and Parks Department

Page 1

¶ 4

The position of the Omaha District, as well as the State of South Dakota, has always been that regulation of hunting and fishing on Corps project lands in South Dakota is a matter of state law. This was clearly the intent of Section 4 of the 1944 Flood Control Act, 16 U.S.C. §460d. As you know, the Corps has only proprietorial jurisdiction over its project lands along the mainstem of the Missouri River in South Dakota. Such lands remain subject to state, civil and criminal jurisdiction.

Exhibit 8

Revision 1987

TITLE XIII

CHEYENNE RIVER SIOUX TRIBE

HUNTING, FISHING AND OUTDOOR

RECREATION CODE

. . .

Section 13-1-12 ENFORCEMENT

- (1) It shall be the duty of every Tribal Conservation Officer and Tribal Law Enforcement Officer to enforce the rules, regulations and ordinances promulgated hereunder relating to hunting, fishing and trapping. Such officers may issue citations and/or make arrests and bring before the proper court any persons violating any rules, regulations or ordinances adopted and pertaining to the policy, intent and purposes of this Code.

Section 13-1-13 AUTHORITY TO ENTER PRIVATE
LAND

- (1) Any officer in the course of his duties, may enter upon private land within the boundaries of the reservation and remain thereon while performing such duties hereunder, and such actions by the officer shall not constitute trespass [sic].

Section 13-1-14 SEARCH

- (1) Any officer may search without warrant any conveyance, or any receptacle for game animals, birds, fish or any package, box or hunting camp or similiar [sic] place which he has reason to believe contains evidence of violation of this Code, regulations, ordinances or rules adopted hereunder pertaining to hunting, fishing or trapping.

Section 13-1-15 ARREST WITHOUT WARRANT

- (1) Any officer may, upon probable cause, seize without warrant, all birds,

animals, or parts thereof taken, killed, transported or possessed, contrary to the provisions of this Code or any regulation, rule or ordinance pertaining to hunting, fishing or trapping, and may seize without warrant bows, guns, traps, nets, seines, decoys, boats, lights, fishing tackle or other device unlawfully used for hunting, fishing or trapping. Such officer shall issue a receipt to the person in possession of the items seized stating time, place, date, items seized, where such items will be held and the name of the officer seizing said items.

Section 13-1-16 SCHEDULE OF FINES

- (1) The Committee may adopt a schedule of fines to be imposed for violations of this Code, by the Tribal Court.

Section 13-1-17 PENALTIES FOR VIOLATION OF THE CODE: PROCEDURES

- (1) Violation of any provision of this Code or any regulation or proclamation issued thereunder by the Tribal Council shall, unless otherwise designated, be a civil offense and may, in addition be punishable by revocation of fishing and hunting or other licenses, confiscation and forfeiture of equipment, and expulsion of nonresident nonmembers from the Reservation, and such other authorized action as the Tribal Council may deem appropriate.
- (2) At the time the field detention is made and/or citation is issued for violation of this Code, the officer may confiscate any fishing equipment, rifles, guns or other fishing or hunting equipment or paraphernalia as reasonably appears to have been involved in the commission of the violation for which the citation has been made and shall give the person from

- whom such things were taken an itemized receipt for all such confiscated items. The Court, when hearing the case concerning the alleged violation, may in addition to any other liability imposed upon a finding of a civil violation, offer the forfeiture to the Department of all or part of the confiscated items, only upon a finding that the facts constituting the alleged violation merit such further penalty.
- (3) Not less than once each year, the Director or his designated representative shall conduct a public sale of all confiscated items not appropriated for the official use of the Department. Such sale shall be by auction, held after not less than one week's notice to the general public, and the proceeds therefrom will go into the Game Fish & Parks Enterprise Account.

. . . .

- (5) In cases of violations of this Code or any regulation or proclamation issued hereunder in which the person alleged to have committed the violation resides within the territorial jurisdiction of the Tribe, the accused person shall not be taken into custody if he voluntarily signs a promise, printed on the citation issued for the violation, that he/she will appear before the Tribal Court within ten (10) days, and if, in the judgement of the officer involved, no arrest is necessary to protect the peace and safety of the reservation.
- (6) In cases of violations of this Code or any regulation or proclamation issued hereunder in which the person alleged to have committed the violation, does not reside within the territorial jurisdiction of the Tribe, the accused

person shall not be taken into custody if he/she a promise, printed on the citation issued for the violation, secured by a bond, that he/she will appear before the Tribal Court within ten (10) days and if, in the judgement of the officer involved, no arrest is necessary to protect the peace and safety of the reservation. Such bond shall be equal to 50% of the maximum fine leviable, or \$50.00 for each offense, whichever is greater.

PTA MM

Senate Hearing No. 100-500

FINAL REPORT OF THE GARRISON UNIT JOINT
TRIBAL ADVISORY COMMITTEE

November 19, 1987

(p. 12)

Senator Burdick. Mr. Chairman, you have covered the ground quite well, but I would like to ask one last question here.

The committee has been advised that the impact of non-Indian recreational use of the shoreline has resulted in numerous cases of trespass on Indian lands and the disregard of Indian property rights by non-Indians seeking access to shoreline areas. Is your agency vested with authority to address this problem?

Mr. Doyle. Sir, we have a responsibility to operate and maintain our projects in accordance with Congressionally authorized

directives. I am not certain to what extent we have enforcement authority over tribal lands. Perhaps I can ask Mr. Velehradsky to answer that, and if we need more, we will supplement our answer for the record.

Mr. Velehradsky. Senator, it is my understanding that, in this instance, we would rely on the State agencies for jurisdiction over the enforcement of laws on those areas. The United States or the Corps of Engineers has no jurisdiction in terms of enforcement within the project. We rely on the State agencies.

Senator Burdick. What do you mean no jurisdiction? They have the jurisdiction. They just assign some of it to somebody else to maintain. They have jurisdiction.

Mr. Velehradsky. We have jurisdiction over the land, but in terms of enforcing State game laws, we do not have any jurisdiction over State game laws.

Senator Burdick. What about trespass?

Mr. Velehradsky. Trespass we would have.

Mr. Doyle. But I think the legal question that we need to look into and amplify for the record is to what extent we have authority to go onto Indian lands to enforce that, and I will provide that for the record, sir. I don't have the answer at the top of my head.

Senator Burdick. This is an anomaly. There is trespass on Indian lands, but you can't go on Indian lands to stop the trespass.

Mr. Doyle. Well, maybe I can, but that is what I have to find out for you. I can't tell you right now, but I will get that for the record.

Senator Burdick. All right. Thank you.
[Material to be supplied follows:]

The Corps relies on local and state police assistance for law enforcement activities on Corps lands. In fact, the Corps

has been authorized by law to pay local and state police for expenses incurred when engaged in additional law enforcement activities on Corps lands. The Corps does not possess law enforcement authority on adjacent tribal reservation lands. The Federal Government, as trustee of Indian lands, has an interest and responsibility in protecting tribal lands against intrusion by trespassers. To my knowledge, this function would have to be undertaken by the U.S. Attorney or the U.S. Marshall. In some states, legislation has been passed whereby the state has taken on the responsibility to protect Indian lands from trespassers, and the U.S. Supreme Court has upheld the validity of these statutes. To my knowledge, the State of North Dakota has not enacted such legislation. Thus, the Tribes must rely on the assistance of the U.S. Attorney.

Letter to Donald McGhee, Chairman, Crow Creek Sioux Tribe from Steven G. West, Colonel, Corps of Engineers [p. 1, 2d ¶; p. 2, first full ¶; p. 3, first sentence of middle ¶.]

These project lands are not now Indian lands nor have they been Indian lands since the dates they were acquired by the United States as parts of general public projects. As of the dates these lands were acquired all Indian rights, titles and interests were extinguished except for minor residual interests such as permission to graze livestock above the ordinary highwater mark and the retention of oil, gas and other minerals which are subject to a permanent flowage easement that was taken by the United States. These minor residual interests in no way diminish the right, title and interest that was acquired by the United States in these lands for use as parts of general public

projects for the use and benefit of the general public.

. . . .

While I take no position as to whether the Tribe or the State ultimately should have jurisdiction in this matter, until the question is finally resolved I must be guided by the existing legal record and court decisions. These indicate to me that it was the intent of Congress that jurisdiction over these former Indian lands is in the State of South Dakota.

. . . .

This relatively recent assertion of jurisdiction by the Tribe without any apparent legal authority to support it can only result in conflict and confrontation which will deprive the general public of the right to peacefully enjoy the use of public recreation areas.

Exhibit 2

February 13, 1989

Ordinance No. 52

Cheyenne River Sioux Tribe of South Dakota

An Ordinance providing for civil forfeiture of property utilized in violation of Cheyenne River Sioux Tribal Law.

BE IT ORDAINED BY THE CHEYENNE RIVER SIOUX TRIBE OF SOUTH DAKOTA:

Section 1. Policy.

The policy of the Cheyenne River Sioux Tribe is that:

A. All property, articles, items and materials utilized in a manner contrary to any ordinance of the Cheyenne River Sioux Tribe shall be subject to forfeiture to the Cheyenne River Sioux Tribe pursuant to the procedures designated herein.

B. The forfeiture of property pursuant to this Ordinance shall be a civil proceeding, instituted as an action In Rem.

Section 2. Subject Property.

The following property shall be subject to forfeiture to the Cheyenne River Sioux Tribe and no property right shall exist in them:

A. All property used in violation of Ordinance No. 41a, the Cheyenne River Sioux Tribe Gaming Ordinance, as more specifically designated therein.

B. All alcoholic beverages located on the premises of a business establishment which is operating in violation of Ordinance No. 48, the Cheyenne River Sioux Tribe Liquor License Ordinance.

C. All property, of any description, which is used in a manner which violates any other ordinance duly enacted by the Cheyenne River Sioux Tribe.

D. All vehicles or conveyances which are used, or are intended for use, to transport or in any manner to facilitate the transporta-

tion, sale, receipt, possession or concealment of property described in paragraphs A, B or C, except that--

(1) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of any tribal ordinance; and

(2) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of federal, state or tribal criminal laws.

E. All books and records, including microfilm, tapes and data which are used, or intended for use, in violation of any tribal ordinance.

F. All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for any article or service in violation of any tribal ordinance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments and securities used or intended to be used to facilitate any violation of any tribal ordinance, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

Section 3. Procedures for seizure.

A. Any property subject to forfeiture to the Cheyenne River Sioux Tribe under this ordinance, with the exception of seizures made under the conditions listed in Section 3(B), may be seized by the Cheyenne River Sioux Tribal Police under process issued pursuant to the following procedures:

. . . .

(7) Remission or Mitigation of Forfeiture. The Tribal Court, if it determines that there has been no violation of Tribal law, or finds the existence of mitigating circumstances which justify remission or mitigation of the forfeited property, may remit or mitigate the forfeiture on such conditions as it deems reasonable and just.

B. Seizure without process, as designated in Section 3(A), may be made when:

(1) The property subject to seizure has been the subject of a prior judgment in

favor of the Cheyenne River Sioux Tribe in a civil injunction or forfeiture proceedings;

(2) The Cheyenne River Sioux Tribal Chairman has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(3) The Cheyenne River Sioux Tribal Chairman has probable cause to believe that the property has been used or is intended to be used in violation of any tribal ordinance, and has charged the person in possession of the property with a violation of the applicable Tribal ordinance.

In the event of seizure pursuant to paragraph (2) or (3) of this subsection, proceedings under subsection A of this section shall be instituted promptly. All seizures pursuant to this subsection shall be conducted according to the provisions of subsection 3A(5).

. . . .

Section 6. Vesting of Title in Cheyenne River Sioux Tribe. All right, title and interesting property described in Section 1(a) shall vest in the Cheyenne River Sioux Tribe upon commission of the act giving rise to forfeiture under this ordinance unless the forfeiture is remitted or mitigated pursuant to Section 3A(7).

State of South Dakota v. Ducheneaux

November 1988 Preliminary Hearing and October 1989 Trial Transcripts.

McCrea Preliminary Hearing Transcript

[p. 112, ll. 6-21]

Q A major part of your duties is law enforcement, I assume; is that correct?

A Yes.

Q Have you made arrests in the time that you were conservation officer?

A Yes. In Ziebach County approximately 25.

Q Have you ever done law enforcement on Corps of Engineers land?

A Yes, a number of times.

Q Do you have any idea how many?

A I'm going to estimate at least several dozen times.

Q Has the Tribe ever attempted to interfere with your law enforcement activities on non-Indians Corps land?

A No. They've been good.

Q Has the United States ever tried to interfere?

A No.

Mickelson Preliminary Hearing Transcript
[p. 127, ll. 3-25; p. 128, ll. 1-16]

Q Have you ever engaged in law enforcement activities on Corps of Engineers land?

A Yes, sir.

Q Do you have any idea how many--well, let me ask you what kinds of activities you performed on the Corps of Engineers land?

A I would check fishing licenses and some hunting licenses in the area of Rousseau Creek and in the area on the Moreau River south of Jim Ducheneaux.

Q Did you check for gill netting?

A Yes, sir.

Q Check for violation of limits?

A Mainly the main limit checking was done out of the State patrol boat, safety patrol boat and that would be done along the, of course from the water and checking boats, fishing on the Moreau and up in the confines and bays of different areas in Dewey county.

Q Did you ever make any arrests on Corps of Engineers land?

A Yes, sir.

Q Do you know about how many?

A Two that I can remember.

Q Did you ever have any law enforcement contacts, other law enforcement contacts on Corps of Engineers land. Can you qualify those?

A Other law enforcement contacts. I don't know where you're headed.

Q Where you checked somebody's license, the kinds of things you were talking about before.

A We would check smelters in Rousseau Creek in the spring when the smelt would go on their runs. We'd be down there checking licenses making sure they were complying with the daily limit.

Q Was that an ordinary kind of thing for you to be doing in the ordinary course of business?

A I felt like it was my responsible [sic] to check all non-Indians in all locations in Dewey County.

Q Including the Corps lands?

A Including the Corps lands.

Crouch Preliminary Hearing Transcript
[p. 138, ll. 11-25; p. 139, ll. 1-14]

Q Have you ever personally engaged in law enforcement activities on Corps of Engineers lands this past year?

A Yes I did.

Q What did you do?

A Checked the shore fishermen during the opening of the grouse season. I also checked hunters hunting along the Corps areas.

Q Hunting grouse?

A Grouse.

Q Do you know about how many hunting checks you made on the Corps lands this year?

A Fifteen-twenty people.

Q Have you been engaged in law enforcement activities on Corps lands through the past years?

A Yes, since I started as a conservation officer in Timber Lake in 1976.

Q So since 1976 you have been doing law enforcement on Corps land?

A Yes. Most of the year up there it's shore fishermen and then some grouse hunters and a few late season predator hunters.

Q Has the Corps ever told you you can't do that?

A No.

Q Has any person, any Indian person ever made an allegation to you that their cattle were harmed because of hunting activities on the Corps land?

A Not on the Corps land.

Lebeau Preliminary Hearing Transcript
[p. 179, ll. 5-25; pp. 180-181; p. 182, ll. 1-8]

Q In carrying out your duties as buffalo manager have you experienced any difficulties with non-Indian hunters?

A Yes, sir. Repeatedly, yes.

Q Can you describe those difficulties?

A Well, what season do you want me to start at, deer season, bird season?

Q Deer season if you want to.

A Bird season is first. I'll start with that. Prior to around two-three weeks ago our fences, or excuse me, our gates into the unit, buffalo reserve, into the reserve ground did not have padlocks on them. We just latched them shut. On weekends we'd get a large amount of non-Indian bird hunters coming across the bridge and they would drive down into the breaks and they would come into the unit and start walking up and down the creeks shooting birds.

As far as high powered rifles, that I don't know about. Basically it was the bird hunters.

Q What's the impact of bird hunters when they hunt there?

A It disturbs our herd. There's also, in my opinion, there's a grave danger of one of the hunters possibly getting attacked by one of our herd bulls because it's a wild animal.

Q Your gates are now padlocked. Why did you put the padlocks on?

A To try and keep the hunters out.

Q Did you have problems with the gates being opened?

A Yes. Gates were left opened. I had fences cut. that type of thing.

Q How do you know that it's the non-Indian hunters that are causing the problems?

A Because I've talked to and had several confrontations in person with non-Indians who are hunting there. I caught them redhanded.

Q When you say caught them--

A I actually witnessed them driving in, getting out, loading shotguns and walking down the creeks at which time I would drive over there and get out of my vehicle and tell them they had to leave.

Q Were they on trust land?

A Yes, sir, they were all on trust land.

Q Have you encountered problems with people hunting on the taking area?

A Yes, sir. I have had those problems, too.

Q What are those problems?

A Mainly it's with the boaters, the individuals that come across the river on the boats. What they do is they pull up to the shoreline, get out of the boat then walk up and down the creeks that lead into the river.

Q Is it the same problem leaving gates open?

A On the boats, no.

Q Shooting among the herd?

A Yes, sir. There have been instances where I've witnessed boat hunters shooting at birds flying in front of where the herd was standing.

Q Is there ever any trapping that goes on in this area?

A In the reserve itself, no. Where I live, yes.

Q Who traps down there?

A I don't know the individuals. I had a confrontation with one non-member and that took place in '82, '83 sometime in there.

Q Can you describe that situation?

A My wife and I were out cutitng [sic] firewood, driftwood along the shoreline and we went down to the shore and we found a dog that we recognized as being from the Swift Bird Community caught in a trap. I happened to have my pistol with me and I shot the dog because it was, it's left front leg had been

all mangled and it was all swollen up. I took the trap off the dog and just, I was angry and I threw the trap into the water.

It was I would guess maybe an hour or so later we had moved further down along the point to another stash of wood and this individual came across on a boat. The first place he went to was where we had found the trap. He didn't get out of the boat. He turned around and he came back to where my wife and I were at. He again did not get off his boat and I had a brief verbal exchange with him at that time.

Q Do you know, was the trap on Corps land?

A Yes, Sir, it was.

J. Lebeau Preliminary Hearing Transcript
[p. 186, ll. 2-25; pp. 187-189; p. 190, ll. 1-21]

Q Do you have a range unit from the Tribe?

A Yes I do.

Q How do you get a range unit from the Tribe?

A Well, if you own cattle you can apply for a range unit allocation. I have cattle.

Q About how big is your range unit?

A About 1,000 acres, I guess.

Q Does it include land that's held in trust?

A Yes it does.

Q Does it include Corps taking land?

A Yes it does.

Q Is it fenced?

A Yes, it is fenced.

Q Is the taking area fenced from the trust land?

A Do you mean is it separated?

Q Yes.

A No.

Q Do you reside on your range unit?

A Yes I do.

Q Have you encountered any problems with non-Indian hunters on your range unit?

A Yes I hae [sic].

Q Can you describe those problems?

A My problems with them is gates. Three of the gates that I have that access into my range unit are on Corps land. One of them I can observe from my kitchen window and I see some of them close them, some of them don't. I found it necessary to go down and wire the gate. that is, the one on the boat dock side. My range unit incidentally is split by Highway 212. Part of it's on one side and part of it's on the other.

When I did that then they go down to the water gap and they let the wires down and they go around that way.

Q What kind of problems does that cause?

A It causes serious problems because of the highway. I can have them killed out there.

Q Your livestock?

A My livestock, yes.

Q Do you have similar problems with Tribal members hunting on your land?

A Generally they ask and generally they are on foot.

Q Because they're on foot they don't have the same amount of difficulties with the gates?

A No. They crawl through the fence.

Q Have you ever encountered any problems with non-Indians driving up and down the road that divides your property?

A Yes. I'm an early riser, mostly just because I'm a rancher. Hunting season I can see them start coming off on the flat. They just come over car after car after car. Soon as they hit the west side they split up and they start shooting all the way up. They'll shoot from the highway. It makes me angry. It's dangerous.

Q Are they hunting on the right-of-way?

A Hunting on the right-of-way and those going down, branching off at the boat dock and on the park side, the Tribe also has a park

down there. They start branching off of there, especially when it's grouse or prairie chickens, whatever you call those birds; that's when it's most dangerous.

Q Are they shooting onto trust land?

A Sir, yes, except where it's further closer to the bridge then thta's [sic] Corps land on either side. But as you come up towards my place you get on Tribal land and they're shooting.

Sir, I have the breaks that run down all along there which is conducive to wildlife, birds, deer, fox, I have everything in my unit. But the birds, the grouse are the ones that they shoot from the highway.

Q Have you ever had an difficulties with people driving three-wheelers on your property?

A That is the most irritating, the three-wheelers.

Q Are those hunters?

A I assume they must be hunting. What else are they doing in there.

Q What kind of problems do they create?

A They too, in fact the man from the Corps that was there one day, I was showing him something else and there were the tracks of the three-wheelers. They just let my fence down and went right on through.

Q They were on the Corps land?

A They were on the Corps land but my fence runs down to the river and that's my fence to put, to keep my cattle in, my horses and whatever else. And anymore to keep them out.

Q Have you ever noticed State wardens policing these sorts of activities?

A That's what makes me angry about it. I never see them. By the time those hunters [sic], at 5:00 o'clock in the morning you can see them go and when I see the Corps, whatever they are, the game wardens or something, it's

the middle in the afternoon. Those guys have left already.

MR. McELROY: No further questions.

CROSS EXAMINATION

BY MR. GUHIN:

Q Mrs. Lebeau, can you tell me the last time you called a State conservation officer?

A I don't call those people, because my people are those people over there and they're the ones that have jurisdiction as far as I'm concerned. I call them and report it over there. Or I call land operations or I call the BIA when I have those problems because we have jurisdiction.

Q Apparently for the same reasons you wouldn't be interested in a civil remedy in State court?

A In what?

Q A civil remedy in State court being available to you?

A I don't know what that has to do with anything.

Q Has any of your cattle actually ever been hit by a car?

A No, but they have been chased around when they come running home, yes. They have been bothered and disturbed.

Q Do you know what a cattleguard is?

A Yes I know what a cattleguard is and I darn near had a horse killed because the Corps put a cattleguard down there.

Q You don't want cattleguards on your property?

A No I don't.

Q It would help the situation though, wouldn't it?

A I don't want a cattleguard because they are dangerous for livestock.

Fischer Preliminary Hearing Transcript
[p. 193, ll. 9-25; p. 194, ll. 1-13]

Q Have you encountered any difficulties with non-Indian hunters on your range unit?

A Yes.

Q Could you describe those problems for us?

A Well, in my opinion the majority of them come in there and hunt on the Corps land with the attitude that they don't need permission for anything. They just come in there and do as they please.

There is no distinct markings for a line from the Corps to the trust land. They shoot and drive across back and forth and, you know, usually they never know for sure which they're on unless they're right down next to the river.

Q Does that create any particular problems for you in grazing your livestock on your range unit?

A Yes. Sometimes like if they're down in the trees shooting the cattle are back out, you know, up next to the hills there. They

can shoot in the direction of the cattle and, you know, you would never know unless they actually hit one.

They have shot a goat that had been on our place for years.

Q How do you know that it was non-Indians that shot the goat?

A Because that particular fall, or I should say at least that particular week for sure there was no Indian members down in that area hunting at all.

Q Do you have any problems with gates and fences and those sorts of things?

A Occasionally.

Rousseau Preliminary Hearing Transcript
[p. 204, ll. 16-25; p. 205, ll. 1-16]

Q Have you encountered non-Indian hunters without a Tribal license on Corps land?

A One particular instance, yes.

Q Can you tell us briefly about that?

A Okay. This I believe was in '87. The Tribal Council went on record to shut down deer hunting season, both species. Therefore there was no deer season within the Tribal Reservation.

I encountered a Michael Keys on Corps taking area. So then I, prior to this I had radioed into the police department and an officer come down to assist me in the incident. I went down and confronted Mr. Keys about it and he said he didn't have to have a Triba [sic] license. I said within the Reservation boundaries there is no deer season. He said well, I'm aware of that and stated that he worked for the Corps of Engineers and that this was open to the public.

He advised me to call in the State game warden which I complied with his wishes. We call in Petri and John Kirk, I believe it was, Tom Petri and John Kirk.

So we held a small discussion there and was later advised to call in John Cooper. We got ahold of Mr. Cooper on the state radio and he advised us that at the present time the Tribe did not have jurisdiction on this piece of land. So then we considered Mr. Keys was perfectly within his rights and we let him go.

Hanten Trial Transcript

[p. 7, ll. 3-25; p. 8; p. 9, ll. 1-7]

Q How long have you worked with the Missouri River reservoirs?

A Since I moved to Pierre in 1965.

Q And you've worked with them as part of your position with Game, Fish and Parks, is that right?

A Correct.

Q What does South Dakota do and what has South Dakota done to manage the reservoirs?

A We've been involved in reservoirs since they were first created. We began work in monitoring the fish populations shortly after

the reservoirs were closed and we have also been involved in enhancement of the habitat and setting regulations and enforcing regulations.

Q Have you been involved in the regulatory effort on the reservoirs since the very first?

A We began our recommendations to the Corps of Engineers on various water levels as far as benefitting fish around 1952.

Q Speaking to the issue of law enforcement on the reservoirs; have we been consistently involved in that effort on the reservations?

A Yes we have. We have established fishing regulations for the State of South Dakota and the reservoirs since the reservoirs were closed and began to fill and our law enforcement people have enforced those regulations.

Q And by regulations do you mean limits for size of fish and number of fish and so on?

A That's correct.

Q How important is our ability to be able to do that as part of the management effort?

A We feel that is very important. If there were no regulations and there were no enforcement there would be uncontrolled exploitation of the fish population.

Q Mr. Hanten, I'd like to trace with you an outline of how the reservoirs have developed and South Dakota's involvement in that. When was the Oahe Reservoir closed?

A Oahe Reservoir was closed in 1958.

Q When did South Dakota's work on the reservoir begin?

A The work began, our first report on reservoir investigation and monitoring the fish population was in 1959.

Q Okay. Can you identify Exhibits 175 through 178 please? Can you tell me what those exhibits are, Mr. Hanten?

A These four reports are our first reports on Oahe Reservoir done by Ned Fogle in the years of 1959, '60, '61, '62. Or '62-63.

Q What do these reports show, Mr. Hanten?

A These particular reports refer to the development of the fishery on Lake Oahe. After the initial closing various species were in the river system and they began to reproduce and the population changed from a river to a reservoir type of habitat.

The reports documented changes and reproduction of the various fishes that occurred in their relative abundance.

[p. 52, ll. 2-10]

Q Where do you take those eggs from the river?

A We take them at our spawning station on Foster Bay on the Cheyenne River and on the Moreau River and on the Grand River.

Q So the eggs come from the areas on the reservation?

A I'm not prepared to answer that.

Q But they come from the Moreau River and they come from the Grand River?

A That is right.

[p. 65, ll. 17-25; p. 66, ll. 1-5]

Q You manage law enforcement. Why is law enforcement important?

A Law enforcement is important to make sure the regulations are enacted to protect the species from over exploitation. Those regulations are important.

Q What would occur without the law enforcement?

A Without the law enforcement there would probably be over exploitation and depletion of the population to the point where it may not be a viable fishery.

Q Was South Dakota involved in law enforcement of the guidelines in the '60s and '70s?

A Yes.

Q Repair this problem, is that right?

A Yes.

Dave Fielder Trial Transcript

[p. 84, ll. 13-25; p. 85, ll. 1-23]

Q Now, if I look at the top of page 5 I see that the harvest goal for lower Lake Oahe is 30,000 to 35,000 Walleye per year, is that correct? And when we say lower Lake Oahe, are we talking about the same areas that we identified in 173?

A No. In terms of this document I believe I divided the lake into just two halves, upper and lower. There's no middle. Again there is roughly geographic, I believe I make somewhere in here specific designations, but they're roughly geographic halves of the reservoir so that they reflect--middle Oahe then would be approximately equally divided between upper and lower.

Q So on page 3 of 172 is a map and you'd just draw it in the middle of the area, your

dividing line in the middle of the area, I take it?

A Yes, I think so.

Q Now if I go back again to page 5 I see thta [sic] the total harvest goal for upper Lake Oahe is 200,000 to 250,000 Walleye per year. That's under paragraph 3. Do you see that?

A Yes.

Q We're talking about number of Walleyes, not pounds?

A That's right.

Q Those Walleye come from natural recruitment, do they not?

A Primarily, yes.

Q And that natural recruitment takes place where?

A Well--

Q If you know.

A A lot of it takes place in the Grand-Moreau river arm portions of Lake Oahe but

there is spawning areas all along the shoreline where some recruitment can take place. It's difficult to say exactly where.

Q But the Grand and the Moreau contribute significantly to that, I take it?

A I think so.

Riis Trial Transcript
[p. 100, ll. 14-25; p. 101, l. 1]

Q From this document can you tell the Court what the Walleye harvest is on an annual basis?

A In '86 the Walleye harvest I believe was about a quarter of a million fish, 250,000. From my professional judgment and in talking to our people in for example conservation officers in Gettysburg and Mobridge, '87 and '88 have also been exceptional years.

In other words, what I'm saying is we have an excellent Walleye fishery in Lake Oahe. In 1986 my estimate for the entire lake was 256,737 and it has been increasing in

lower Oahe and the numbers are up in the upper areas and so are the pounds. We have one of the finest Walleye fisheries in the country in Lake Oahe.

[p. 102, ll. 14-23]

Q Could you identify this document, Mr. Riis?

A Yes.

Q What is that?

A This report includes some of the same type of information that the last one we discussed had. In addition to the harvest there's some Walleye movement information in here. In the early '80s I believe we tagged about 16,000 or 17,000 Walleyes to learn about angler exploitation or another word for that is harvest rate, and also to learn about their movement.

[p. 104, ll. 19-25; p. 105; p. 106, ll. 1-16]

Q Are you also involved in your duties with the department with any endangered or rare species of fish?

A Yes, I have a study on Pallid Sturgeon in Lake Sharpe at the present time.

Q If you would take a look at Exhibit 197, Mr. Riis, can you describe what this document is?

A This is a study outline of our Pallid Sturgeon project. It's entitled Investigation and Conservation of Pallid Sturgeon in South Dakota. The Pallid Sturgeon is a very rare species and we in South Dakota have documented 40 percent of the Pallids from their entire range this summer. Their entire range I believe includes over 3,000 miles. Just yesterday I was told of a Pallid Sturgeon in upper Oahe but we have not documented that yet.

Q When you say 40 percent of the Pallid Sturgeon, how many are we talking about?

A Four out of ten.

Q That's along the entire system, is that correct?

A Yes.

Q Why do you have a study like this, particularly here of the Pallid Sturgeon? What's the significance of a study like that?

A There is a lot of interest in the Pallid Sturgeon at the present time. This species is in the process of being listed, it's in the Washington D.C. process and I am also interested in the species just because of all the work I've done on the river and have seen so few. They're probably a species that have been around for 300 million years. We are cooperating with the Corps of Engineers, the U.S. Fish and Wildlife Service, North Dakota and Montana on this species.

Q What do you do as part of this study?

A This entailed a great deal of sampling to collect these sturgeon and we surgically

implanted these Pallids with a sonic transmitter after taking all their measurements and making sure it was a Pallid Sturgeon as opposed to a Shovel Nose Sturgeon. Our sonic tags last approximately two years and we also equipped the fish with a lifelong tag. Some of these fish get up to 50 to 60 pounds and they might be that old. But the lifelong tag is called a pit tag and that is a passive intensive transponder.

We also have an external tag that says that this is a rare species and please release it and there's a phone number on it. So basically we are tracking their movements, trying to identify their habitat and learn about the sturgeon's spawning. We're attempting to artificially propagate the Shovel Nose Sturgeon, a closely related species.

Talsma Trial Transcript

[p. 158, ll. 6-25; pp. 159-161; p. 162, ll. 1-2]

Q Mr. Talsma, I believe you talked about the economic significance of the fishery. In fact, we had an exhibit did we not, that was a study that you commissioned on the economic value of the fishery? The fishery is quite important economically to the State, is it not?

A Yes it is. The State was making an investment of about \$2 million in fisheries during the period 1982 through '85. We wanted to make sure that that investment was a good investment.

Q It averages about \$3 million a year more or less for the fisheries throughout [sic] the state, doesn't it?

A I don't understand the question.

Q Can you tell me what the annual fishery budget for the State has been?

A The annual fisheries budget in the wildlife division approximates about one quarter of the entire wildlife division

budget. The wildlife division budget is about \$11 million. So it would be about \$3 million.

Q And about \$500,000 of that is devoted to the Oahe fishery, is that true?

A That would probably be a pretty close estimate, yes.

Q And when we say \$500,000, some of that money is federal aid money, is it not?

A Yes it is.

Q About two-thirds?

A No. It would be somewhere between probably about 50 percent and two-thirds, but a little less I would guess than two-thirds.

Q The State has attempted to as gain the return that it gets from its fishery at Lake Oahe, hasn't it?

A Yes it has.

Q Is it more than 500,000?

A Yes it is.

Q So reallyly [sic] the return is greater than the investment, isn't it?

A From the perspective of just dollar flows through the economy of the State of South Dakota, yes.

Q Of course you've got to use those dollars back into the fisheries, don't you?

A Yes.

Q That's a requirement actually of Dingell-Johnson, isn't it?

A Yes. We reinvest both the income from the excise tax on fishing tackle and our fishing dollars coming from the fishermen back into the resource.

Q If your annual budget is \$500,000 and you get somewhere over 50 percent from the federal government of that, you get back more than 500,000. What do you do with the excess?

A I believe you're misinterpreting the data that I shared with you about the relative economic value. The value when I talk about investment of \$10 let's say return on the dollar, that has to do with the flow through

of all the money throughout the State of South Dakota.

The money in the Department of Game, Fish and Parks is strictly used entirely for the resource. So whatever we take in we spend back on the resource. We've never had any surplus. Usually were [sic] on the deficit side.

Q I understand you don't have surplus within the department. I understood your testimony to be that, and correct me if I'm wrong, I understood your testimony to be that in terms of licensing fees that the department would attribute to Lake Oahe, you would get back more than \$500,000?

A On the long term, yes. Our investment returns is probably more, you're talking about the sale of fishing licenses?

Q Yes.

A The sale of fishing licenses on the long haul have been then our short term investment

from the standpoint like what we invested that \$2 million.

Q And I understand that you have to use it for fishery resources. With that money you get back above and beyond the money that you took in from Oahe, do you use it in the rest of the state for fishery resources?

A Oh yes. The funding in Game, Fish and Parks goes into one general fund for fish and game, that \$11 million and we, through our commission, can use that on game activities, small game, endangered species, fish or whatever. The only requirement the of [sic] federal government that you're talking about is that when we do a federal study, if we make any income off that federal investment that income has to be reinvested or reimbursed back to the federal fund.

Q You do that?

A None on fisheries that I know of.

Q You do get more back from licensing on Lake Oahe then you invest in the short term. I believe that was your testimony?

A Yes.

Q So that you have dollars that come in from Lake Oahe, fishing licenses, that are not returned to investment in the fisheries program at Oahe?

A That may be true on a given year, yes.

Q It's used in other places in the state, is that correct?

A Correct, in the total program.

[p. 173, ll. 17-25; pp. 174; p. 175, ll. 1-17]

Q Does the State have land that is leased out for agriculture purposes?

A Not directly. The State has land that it cost shares through a lease program with farmers or ranchers and then the crop is a share crop.

Q So the farmers get to use the land for agriculture purposes. Does the State retain any rights in those lands?

A Yes.

Q Do you keep control over the hunting and fishing that takes place on your own land?

A Yeah, on our own land.

Q On private land people can hunt or fish on private land, can't they?

A Yes.

Q Is there a problem with access to private land for hunting and fishing purposes?

A Yes, there can be.

Q Isn't that the reason that you are concerned about the public land?

A No, not entirely.

Q There are landowners who don't allow people to hunt and fish on their land, is that not correct?

A That is correct.

Q Why do they do that?

A For various reasons. Some say that they, you know, either are saving it for their own family. Some just don't want to have hunting or fishing. Some worry about safety. Some feel that the population can't stand the hunting or whatever it is. Whatever their opinion is.

Q Have problems with hunters sometimes harassing their livestock?

A Probably, yeah.

Q Those are all valid reasons, aren't they?

A From a landowners [sic] standpoint, sure.

Q Normally a landowner has that kind of control over his property, doesn't he?

A Yes.

Q I know that in Colorado they have a program that is known as "Ask First Program" which encourages hunters to ask landowners for permission prior to entering their land. Do you have a similar sort of program or policy

to encourage hunters to ask permission before they go on private land?

A Yes we do.

Q It's part of your regulations, isn't it?

A Pardon?

Q It's part of your regulations that the State puts out?

A That is correct. But, it's a public relation program too. We have in fact the same kind of bumper stickers and the same kind of things they have entitled "Ask First." We have additional programs too.

[p. 178, ll. 3-25; pp. 179-180; p. 181, ll. 1-19]

A Oh yeah. I spoke to that before and that was concerning such as wanting to have it for their own family or wanting to control the access or wanting to just have no hunting at all. Those types of concerns. In regard to the Corps of Engineers land though and that was what I was commenting on we manage from a

multiple use standpoint. That's our mandate from the Corps. Different from the Forest Service land which is permitting grazing all over and there's no conflict that I know of.

Q You're telling me for the Corps land that were acquired in connection with the construction of the Oahe from the Tribe or from Tribal members what we have been calling the taking area?

A Yes.

Q You know those lands, are you telling me you manage those the same as you manage on the public land within the state?

A We would treat them the same from, especially a joint management thing, the same we would other federal land that is under a similar grazing permit basis similar to the National Forest Service land which include grasslands, the forest land in the Black Hills of course is very protected. So in other words, people can go and hunt those sites.

There is multiple use, both grazing use and hunting use; both grazing use and fishing use or hiking or whatever purpose they would want.

Q Do you draw any distinction between the grazing interest held on the Corps land by the Cheyenne River Sioux Tribe and those grazing interests which may exist on other public lands?

MR. GUHIN: Your Honor, this again is a question of law.

MR. McELROY: I specifically asked the question as to interests, not as to rights.

THE COURT: Overruled.

A I would treat that interest the same as far as both federal agencies and they both have other uses, grazing use is taking place on those lands along with multiple uses. Public lands.

Q In your management policy of the State on those corps [sic] of Engineers land, taking areas that we have been talking about, is

there anything in the State policy that takes account of the Tribal hunting and fishing rights on those lands?

A I would believe so, yes. There is some of that. I'm not understanding the question I think entirely. But, in our dealing with the public we treat the public all the same. So there is no distinction between non-Indian or Indian. They have the same equal right to hunt those lands or fish them as what a non-Indian would have so there is not anything from that standpoint.

Q Excuse me. You treat the Tribal members the same as you treat [sic] non-Tribal members on the lands, is that what you are telling me? I'm confused.

A From dealing with recreating that is taking place on the tape line, either party can recreate on that land. But, there have been to my knowledge cases that allow the Tribe people to hunt those lands with the

Tribal license and so that is why I answered the first part of your question as, yes, that there are some differences.

In other words, the Tribal people on some Corps land do not need a license to fish or hunt.

Q But, it's your testimony that the State has been regulating the activities of non-members on the taking land, is that correct?

A Correct.

Q And your management of those non-members, do you do anything different with regards to the taking land on or adjacent to the Cheyenne River Sioux Reservation then you do on the remainder of the Corps taking lands on the Oahe Reservoir with regards to non-Indians?

A Nothing specific on those lands itself. We would, for example, advise someone if they had to access across Indian land to ask permission if they come in there by boat. It would be the same as hunting, any other way.

Q So is it fair to say in your management policies for those lands as to non-Indians you do not consider the hunting and fishing rights held by the Tribe, the Tribal members?

A I don't understand the question. I don't consider just to the rights to the Tribal members --

Q I want to make sure that we are clear at this stage.

A Okay.

Q As I understand your prior testimony in terms of the State's management policies of non-Indians on the Corps taking lands on or adjacent to the Cheyenne River Sioux Reservation --

A Correct.

Q -- State's policy as to non-Indians are no different then the State's policies say on the east side of the Oahe Reservoir across from the Reservation?

A That is correct.

Unkenholz Trial Transcript
[p. 239, ll. 6-18]

Q Why is it necessary to make these recommendations?

A Well, the Corps of Engineers as the managing agency of the water in the Missouri River Basin has responsibility to meet the needs of a whole host of users, and the fisheries' interests just being one of those. Our interest in this is to provide the Corps with the best objective information that we can in terms of how water levels impact fisheries, how certain water levels could actually enhance fisheries and if certain water levels actually be detrimental to fisheries. So we feel it is our responsibility as research planners to provide this information to the Corps of Engineers so they are able to use it in their decision making process.

Clown Trial Transcript

[p. 503, ll. 6-25; pp. 504-506; p. 507, ll. 1-8]

Q Is the closest you've ever seen deer and cattle together 150 yards?

A About like that.

Q Is your answer yes?

A Yes.

Q Mr. Clown, have you ever appeared in Tribal Court on a hunting and fishing violation in your six years?

A No, sir.

Q Have you ever been involved in any prosecutions of any Indian people for hunting or fishing on a violation -- excuse me -- have you ever been involved in any prosecutions of Indians for hunting and fishing on the reservation?

A I cited some in but I didn't go to court.

Q What was that case thta [sic] you cited somebody in?

A A fish, well, a hunting violation.

Q Do you remember what the name of that person was?

A Austin Rave.

Q Do you know what happened to him?

A I think he plead guilty so I didn't have to go to court at the arraignment.

Q Any other violations?

A Ray Briggs.

Q What happened to Mr. Briggs?

A His was dismissed.

Q Why was that?

A No evidence.

Q Any other violations?

A Ray Dupris.

Q What happened to him?

A Same. He was dismissed.

Q Did you have any further violations?

A Levi Miner.

Q Excuse me?

A Levi Miner.

Q What happened to Levi Miner?

A His was dismissed too.

Q Are there any other violations?

A I had two others, obstruction of governmental functions. But that wasn't a hunting violation.

Q It was not a hunting violation. Mr. Clown, have you ever done any work with depredation complaints?

A No, sir.

Q Have you ever done any work in depredation control like building fences and that kind of thing?

A No, sir.

Q Have you ever worked on animal damage for predator control like skunks or fox or something like that?

A No, sir.

Q Have you ever done any work with abnormal wildlife loss?

A No, sir.

Q Have you ever done any work with endangered species?

A No, sir.

Q Have you ever done any work with habitat development on Tribal land?

A No, sir.

Q Have you ever done any work on habitat development on deeded lands or non-Indian owned land?

A No, sir.

Q Done any habitat development on Corps of Engineers land?

A No, sir.

Q Have you ever done any work with cover plots or wetland restoration?

A No, sir.

Q Do you know whether the Tribe is a landowner on the reservation itself?

A Could you --

Q Is the Tribe a landowner on the reservation?

A Does the Tribe own Tribal land?

Q Yes?

A Is that how you mean it?

Q Yes?

A Yes.

Q Is it a substantial amount of land?

A What do you mean?

Q Well, let me ask this question instead. Do you know of any particular management practices on Tribal land to enhance wildlife?

A I don't know, sir.

Q In the past six years since you've been a game warden has there been any wildlife stocking done by the Tribe?

A You mean big game?

Q Any kind?

A No, sir.

Q Have you ever been involved in any stocking of fish on the Missouri River?

A No, sir.

Q Does the Tribe conduct any fish surveys on the Missouri River?

A No, sir.

Q Does the department own a boat for taking on the Missouri River?

A Yes. It's got a boat.

Q It does have a boat. Has the boat ever been on the Missouri River?

A Just on a demonstration.

Q How many times on demonstrations?

A Once.

Q Once. Does the Tribe maintain any docks or ramps with access to the Missouri River?

A No, sir.

Miner Trial Transcript

[p. 509, ll. 15-25; pp. 510-520; p. 521, ll. 1-14]

Q Would you state your name, please?

A Lenita Miner.

Q Could you tell me your present position with the Tribe?

A Game, Fish and Parks director and Tribal land officer.

Q You hold both positions?

A Yes I do.

Q When did you assume the position of land director?

A 1981.

Q When did you assume the position of Game, Fish and Parks director?

A October of '87.

Q What part of your time is spent as Game, Fish and Parks director?

A Quite a bit of my time. I'm soupposed [sic] to be a fourth time director. However, I spend a lot more time than that with the Game, Fish and Parks.

Q So it's officially a quarter but you spend more time, is that right?

A That's correct.

Q As part of this litigation you furnished records from Game, Fish and Parks to your

attorney who furnished them to us, is that right?

A Yes.

Q Are you familiar with those records?

A I believe so.

Q How far do these records go back?

A I believe maybe '83.

Q Are there any records older than '83 in there?

A Oh, yes. Not complete records though.

Q There are records that go back ten, twenty years, I mean beyond the '50s and '60s?

A Yes there are some in there.

Q But are there records that go back to the '50s and '60s?

A Yes there are records I think that go back that far.

Q And are records like weekly reports and daily reports included in those materials?

A I don't think that the weekly reports in there go back to the '50s.

Q Are the weekly reports that were done in the last decade, are they included; in the last ten years are they included in the records you gave us?

A Yes, I believe so.

Q Ms. Miner, since you've assumed the position of Game, Fish and Parks director, has the department done any reproduction studies on deer or antelope? By that I mean for example, have they done any studies of road kill and fetuses from the road kill for deer or antelope?

A I know what you mean. No, I don't believe that we've had the funding for those types of studies and we've not had a biologist on staff to conduct those types of studies.

Q Since you took over as Game, Fish and Parks director and before this litigation commenced, have you done any surveys on grouse or dove, partridge, any game?

A Yes. Surveys have been conducted.

Q What survey are you talking about?

A The wardens and the biologists have conducted both aerial surveys for deer and antelope.

Q When was the aerial survey for deer done?

A It was the beginning of this year.

Q Beginning of this year?

A Yes.

Q That's after this litigation was commenced, wasn't it?

A That's correct.

Q And the antelope survey, that was done after this litigation commenced, isn't that right?

A That's correct.

MR. GUHIN: If the witness could be handed Exhibit 272, please.

Q Do you recognize this exhibit?

A No I do not.

Q Can you read the title of it for us?

A Wildlife Survey Manual, 1988 through 1993.

Q That's a publication of the State of South Dakota, isn't it?

A Yes it is.

Q Before this litigation commenced the Tribe didn't have any similar manual, did it?

A Not to my knowledge.

Q Has the Tribe done any deer teeth studies like Mr. Rice described in your tenure as Game, Fish and Parks director?

A Excuse me, any what?

Q Deer teeth studies where the deer teeth are cut apart and analyzed for age?

A No we have not.

Q In your tenure as Game, Fish and Parks director has the Tribe done any harvest studies to determine the type of deer taken, the age of deer, sex of deer and so on?

A We began that last year for '88.

Q You began it in 1988 or 1989?

A 1988. However, we did not issue cards or forms at the time the licenses were issued. The wardens attempted to contact the individuals who had purchased licenses by phone. However, the forms that they were using to record the information have been misplaced.

Q That calling was done this spring, wasn't it?

A I don't recall the exact dates that they worked on that.

Q Was it done in 1989?

A Yes it was.

Q You don't have harvest information on deer, age, sex, type, so on for at least the last ten years, do you?

A I don't know about the time prior to when the department was placed under my charge.

Q Well, you're familiar with the records of your department, aren't you?

A I don't know each of the records by heart.

Q Does the department have an endangered species program?

A No we do not.

Q Does the department do any work in abnormal wildlife loss, say when you find five or ten dead out in the field. Does the department do any special studies after that occurs?

A No. We've never encountered any such problems.

Q As of April '88 were you going to recommend a deer season for the reservation?

A After April?

Q In April of '88. Do you recall whether at that time you were going to recommend a deer season for the reservation?

A I believe at that time we were thinking of keeping the big game seasons closed.

MR. GUHIN: I'd like the witness to be referred to her deposition, on page 42, Lenita Miner's deposition on page 42.

THE WITNESS: Okay. I've got it.

Q This is April of 1989. Maybe you won't need the deposition for this. As of April '89 were you going to recommend a deer season?

A Yes.

Q How many deer were you going to recommend?

A We were going to recommend that the licenses be limited to 200 to the general public.

Q And that license would be good on trust lands only, is that right?

A Yes.

Q Ms. Miner, does your department do any work in setting up food plots for wildlife?

A No, sir. We do not have the funding to do so.

Q Does your department do any work in wetland restoration?

A Again, we have not had the funding to carry those things out.

Q Does the department do any work in waterfowl nesting cover?

A No.

Q Ms. Miner, the Tribe is a major landowner on the reservation, isn't that right?

A That's correct.

Q Do you know about how much land the Tribe owns?

A The Tribe owns well over 900,000 acres.

Q Does the Tribe do any special management practices for wildlife enhancement on those lands?

A I don't believe so.

Q Ms. Miner, did you hear the testimony of Mr. Don McCrea as to the condition of the Tribal parks in April of '89?

A I sure did.

Q Do you agree with that testimony?

A I did not go out and personally see the parks so I did not know exactly what condition they were in. We were aware that they were in a rundown condition. But we have --

Q The question is do you agree in April of 1989 that was the condition of the --

A No I cannot agree to that. I didn't see the parks.

Q Do you have any knowledge that indicates that the condition was other than what Mr. McCrea described?

A The wardens explained to me that the parks were in need of repair. They did not inform me that they were in that bad of shape.

Q They described them as rundown, though?

A Yes they did.

Q Does the Conservation Reserve Program have anything to do with the wildlife planning? Let me ask this first. Do you know what the Conservation Reserve Program is?

A Yes I do.

Q Does the existence of that program have any connection with your wildlife planning?

A No it does not.

Q Does your department do any depredation work, for example, putting fences around stacks of feed?

A No. We've never received any calls to my knowledge. I never received any calls.

Q That would be true of depredation both on fee lands and Tribal lands?

A Correct.

Q You don't have any program to pay people for depredation done to their property then?

A No we don't.

Q Ms. Miner, do you recall any prosecution of an Indian person for hunting and fishing violations since 1981 when you were land director?

A For hunting and fishing violations?

Q Yes?

A The ones mentioned by the two wardens who testified earlier.

Q Any other incidents?

A No, I don't believe so.

Q Ms. Miner, are you aware of any criminal or civil action in Tribal Court against a non-Indian for hunting and fishing violations since 1981 when you were land director?

MR. McELROY: Object to the question. There's no foundation to ask her for what happened since 1981. She's only been in charge of the department since 1987.

THE COURT: Sustained.

Q Since 1987 do you recall any civil or criminal action against a non-Indian in Tribal Court for a hunting or fishing violation?

A Again, civil action, regarding those incidents which the two game wardens testified about.

Q Were any of those actions -- so the only incidents you know about were the ones that

the two game wardens just testified about, is that right?

A That's correct.

Q Were any of those actions against non-Indians?

A No they were not.

Q Does your department have any agreements with the Corps of Engineers to enhance fish and wildlife conditions on the Corps of Engineers lands adjacent to the reservation adjoining the Missouri River?

MR. McELROY: I'd object to the question in terms of the characterization of the land as adjacent. That's what this case is all about.

THE COURT: Perhaps the question could, well, of course adjacent, it's geographically adjacent regardless of what -- I guess with the understanding that I won't -- I can understand that where nature or where something is there, why, I won't permit anyone

to characterize it in a way that would be improper and without foundation. Maybe this is just a handy way to describe what you're talking about.

MR. GUHIN: I could describe the lands as the taken area.

Q Do you have any agreements with the Corps of Engineers to enhance fish and wildlife conditions on the take area?

A Not to my knowledge, no.

Q Have you ever done any wildlife enhancement on fee lands?

A No, I don't believe so.

Q Ms. Miner, since 1981 when you were land director have you had any complaints about any non-Indian going into a grazing area and making trouble for cattle?

A No I have not received any calls.

Q And that would be true both on trust lands, fee lands and Corps of Engineers lands?

A Yes.

Q How often are the Corps of Engineers lands inspected to see if somebody is messing with the cattle?

A I don't think I can answer that. The Bureau of Indian Affairs is responsible for monitoring those permits.

Q You don't take any responsibility for that, is that right?

A Not for monitoring the permits, no.

Q Ms. Miner, going back to November of 1988 was it your interpretation -- was it your understanding of Tribal authority at that time was that the Tribe could set a season that was open to members and closed to non-members on the Corps lands?

A Yes it was.

Q And the same would be true of fee lands, is that right?

A That's correct.

Q And the same true on the waters of the Missouri?

A Yes.

Q Ms. Miner, have you ever had any trespass complaints in your position as fish and wildlife director or as land director?

A Trespass on --

Q Trespass complaints?

MR. McELROY: Perhaps we could have one question at a time, Your Honor. Once for the different positions.

THE COURT: Yes.

Q Have you had any complaints about trespass since you've been Game, Fish and Parks director?

A Not that I recall.

Q Have you had any complaints as land director with regard to trespass?

A I haven't received calls. However, I have been informed of trespass.

Q You didn't receive any calls in your official capacity, is that what you're saying?

A That's correct.

Q Does the Tribe since you've been Game, Fish and Parks director do any stocking on the Missouri River?

A No.

Q Do any fish surveys like for species composition or reproduction on the Missouri River?

A No. Again we have not had the funding and we have not had a wildlife biologist on the staff.

Q It doesn't do any management on the Missouri River, does it?

A Not at this time, no.

Q Does the Tribe have any docks or ramps going into the Missouri River?

A No we do not.

Q Do you do any licensing of the boats?

A No we do not.

Ducheneaux Trial Transcript
[p. 548, l. 25; p. 549; p. 550, l. 1]

Q Mr. Ducheneaux, do you know of any non-Indian who has ever been prosecuted in civil or criminal court of the Tribe on a hunting or fishing violation?

A Not to my knowledge, no.

Q Mr. Ducheneaux, is it your position before this Court's order was entered, first orders were entered that the Tribe could cut off a season on Corps of Engineers land or fee land to non-Indians and at the same time have it open to Indians?

A Say again, would you?

Q Let me ask the question a different way. Is it your position that before this litigation commenced that the Tribe could, if it desired, cut off a deer season for example on Corps of Engineers land for non-Indians but have an open deer season for Indians on Corps of Engineers land?

A Yes, sir.

Q Is the same true as to fee lands?

A Within the boundaries of the reservation, yes, sir.

Q And is the same true with the Missouri River waters adjoining the reservation or adjoining around the reservation as you care to see it?

A Those within the boundary, sir.

Q Is your answer yes?

A Yes, sir.

Q That you could cut off the season to non-Indians and leave it open for Indians?

A Yes.

Betts Trial Transcript

[p. 839, ll. 20-25; p. 840, ll. 1-2]

Q Looking still at Exhibit No. 89 I notice, looking at the table of contents and then looking through the document itself that there's nothing on the management of the fisheries, is that correct?

A No, there is not.

Q You were not asked to get involved in the fisheries?

A No. That was not part of the plan. It was strictly for wildlife species.